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RECORD, CASE NO. 14695.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. ~~1221.~~ 794

THE UNITED STATES, APPELLANT,

vs.

PERRY AND RYER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JUNE 20, 1891.

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1 United States circuit court for the southern district of New York.

In the matter of the application of Perry & Ryer for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain paintings imported by them per S. S. Rugia, Nov. 24, 1890, E. #191589.

To the honorable the circuit court of the United States for the southern district of New York.

Your petitioners, Perry & Ryer, being dissatisfied with a decision made on or about the 6th day of March, 1891, by a Board of General Appraisers designated by the Secretary of the Treasury, for and on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as to the rate and amount of duty chargeable on certain paintings imported at said port by your petitioners on the 24th day of November, 1890, per vessels above specified. (Entry number 191589), respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of paintings. The same was classified and assessed by said collector
2 for duty at the rate of 45 % ad valorem. Your petioner being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for their objection thereto, claiming the said merchandise to be free of duty under the provision of the free list of the tariff act of Oct. 1st, 1890, par. 677, for paintings, specially imported in good faith for the use of any society or institution incorporated or established for religious purposes and not intended for sale.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said Board, herein complained of, your petitioners say that said merchandise consists of certain paintings on glass specially imported in good faith for the use of the Convent of the Sacred Heart, in Arch street, Philadelphia, Pa., an institution established for religious purposes; that said merchandise was not intended for sale; that the same was intended for use as a window in said convent; that said painting is the work of a professional artist, that said merchandise is therefore entitled to free entry as aforesaid, and is not dutiable at 45 % ad valorem.

Accordingly, your petitioner respectfully prays the court to order the said Board of General Appraisers to return to the court the record
3 and evidence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be

hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision and to determine the questions of law and fact involved in the same.

Dated New York, Mch. 17, 1891.

PERRY & RYER,
Petitioners.

By CHAS. CURIE,
Attorney 44 & 46 Exchange Place, New York City.

(Endorsed:) No. 385. United States circuit court for the southern district of New York. In the matter of the application of Perry & Ryer for a review of the decision of the general appraisers, as to the rates, &c., of duties on certain paintings, imported by them per S. S. Rugia, Nov. 24, 1890. E. #191589. Petition & summons to return record. Chas. Curie, attorney for petitioner, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Mar. 17, 1891. John A. Shields, clerk.

4 Know all men by these presents, That I, Joseph Treloar, am held and firmly bound unto the United States of America in the sum of fifty dollars, to be paid to the said United States of America.

For the payment of which well and truly to be made I bind myself, my heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with my seal, and dated the 16th day of Mch. in the year of our Lord one thousand eight hundred and ninety-one.

Whereas Perry & Ryer have applied to the circuit court of the United States for the southern district of New York for a review of the questions of law and fact involved in certain decisions of the Board of United States Appraisers made upon the entry of certain merchandise imported by them per S. S. Rugia, Nov. 24, '90, E. #191589;

Now, therefore, the condition of this obligation is such, that if the above-named Perry & Ryer shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

[SEAL.] JOSEPH TRELOAR.

Sealed and delivered and taken and acknowledged this 16th day of March, 1891, before me.

JAMES J. DEAN,
Notary Public [SEAL].

5 *Kings Co., certificate filed in N. Y. Co.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Joseph Treloar, being duly sworn, deposes and says that he resides in the eastern district of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

JOSEPH TRELOAR.

Sworn to this 16th day of March, 1891, before me.

[SEAL.] JAMES J. DEAN,
Notary Public, Kings County, certificate filed in N. Y. Co.

This bond is approved as to form and amount and sufficiency of surety. Dated New York, Mar. 17th, 1891.

E. HENRY LACOMBE.

(Endorsed:) 385. United States circuit court for the southern district of New York. In the matter of the application of Perry & Ryer for a review of the decision of the general appraisers, as to the rates, &c., of duties on certain paintings imported by them per S. S. Rugia, Nov. 24, '90. E. #191589. Bond for costs on application for review. Chas. Curie, attorney for petitioner, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Mar. 17, 1891. John A. Shields, clerk.

6 At a stated term of the United States circuit court for the southern district of New York, held at the United States court and post office building in the city of New York on the 17th day of March, 1891. Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of Perry & Ryer for a review of the decision of the General Appraisers, as to the rates, &c., of the duties on certain paintings imported by them per S. S. Rugia, Nov. 24, '90. E. #191589. No. 385.

Upon reading and filing the annexed petition of Perry & Ryer, importers of the merchandise therein described, and on motion of Charles Curie, attorney for said petitioners, it is ordered that the Board of Appraisers at the port of New York return to this court the record and the evidence taken by them in each of the above entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

E. HENRY LACOMBE.

(Endorsed:) United States circuit court for the southern district of New York. In the matter of the application of Perry & Ryer for a review of the decision of the general appraisers, as to the rates, &c., of duties on certain paintings imported by them per S. S. Rugia, Nov. 24, '90. E. #191589. Summons to return record. Chas. Curie, attorney for petitioner, 44 & 46 Exchange Place, New York City.

7 In the circuit court of the United States for the southern district of New York.

In the matter of the application of Perry and Ryer for a review of the decison of the General Appraisers as to the rates, &c., of duties on certain "paintings" imported by them per "Rugia." Nov. 24, 1890. Suit No. 385. Return of the Board of United States General Appraisers to the order of Hon. E. Henry Lacombe. Dated New York, March 27th, 1891.

The Board of United States General Appraisers sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter and of the facts involved therein, as ascertained by them.

They state that on the 29th day of December, 1890, a letter dated December 27, 1890, which is hereto annexed and marked Exhibit A, was received from the collector of customs at New York, submitting under the provisions of sec. 14 of the act of June 10, 1890, the protest described and marked as follows: Exhibit B.

Collector's No.	Board No.	Protester.	Vessel.	Date of entry.
18265	3406 A	Perry & Ryer	"Rugia"	Nov. 24, '90. "B."

8 EXHIBIT A.

CUSTOM-HOUSE, NEW YORK CITY,
Collector's Office, Dec. 27th, 1890.

Hon. Board of U. S. General Appraisers, New York:

GENTLEMEN: In pursuance of the requirements of sec. 14, act of June 10, '90, I transmit the protest (#3406 A/ 18265) of Messrs. Perry and Ryer from the assessment of duty at the rate of 45% ad valorem, as made by this office on certain so-called "paintings" imported for the use of the Convent of the Sacred Heart, located at Philadelphia, Pa.

An inspection of the invoice shows that the merchandise is described therein as "works of art," paintings on glass representing "St. Agnes," "St. Joseph teaching our Lord," and "other articles of like character."

The appraiser returned the merchandise as "painted glass windows."

The further statement is made by the appraiser (see his special report herewith transmitted) that "the goods consist of pieces of various colored glass, cut into irregular shapes, and fastened together by strips of lead; upon the glass various figures, representing biblical subjects, have been painted. The glass thus painted has been subjected to a heating or burning process, which fuses the color into the glass and makes "them permanent." He further states that "the completed articles are intended

9 to be used for decorative purposes "in churches, and when so used are placed upon the interior of the window frame of the church, and are backed by an outer window of white glass."

A personal inspection of the articles while in public store demonstrated to my satisfaction that the merchandise consists of artistically painted church windows, and before being placed in window frames considerable labor would be required upon them by artisans.

The articles appear in their incompleted condition to be adapted in form to be fitted for setting in gothic window frames. Paragraph 122 of the act of Oct. 1, '90, provides for all stained or painted window glass and stained and painted glass windows.

It is submitted that all painted windows, whether the paintings thereon attained to the rank of a work of art or not, are eliminated from classification under the provisions of paragraph 465, and that the provisions of paragraph 465 are restricted to paintings on canvas and other works of art of a similar character, and does not extend to or cover articles of glass that may be painted, and that require additional labor by artisans to complete and round out and make effective.

It will be observed that the paintings are in sections or pieces, and in the form in which they are imported do not represent the completed picture; but much labor will have to be bestowed upon the various pieces by matching them together and fastening them in position before the article will commence to serve the purpose for which it was created.

10 It is submitted that the provisions of paragraph 677, for the free admission of paintings, covers and extends to and is restricted to those paintings that are commercially known as such, and that are complete in themselves at the time of importation, and that form no part of an article of utility, nor of an edifice. In other words, if the articles under consideration were imported by an individual for sale, would they not be dutiable, not as paintings, but as painted glass windows under the provisions of paragraph 1221. If they are thus liable to duty if imported by an individual, it would appear that the fact they were imported for an institution would not make them any more a painting than if imported for sale.

In conclusion, I invite attention to paragraph 757, which specifically denies the right to import for presentation, painted window glass, or stained or painted glass windows, which confirms my belief that Congress intended to limit the free entry of paintings under the provisions of paragraph 677, to those paintings that are known so commercially.

The importers respectfully request that your honorable Board will give this case your immediate attention, as upon your decision depends large orders of this class of merchandise.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

4 Encl.

11 (Endorsed:) 2486 Po. 3406A. Custom house, collector's office, New York City. Dec. 27, 1890. J. B. Erhardt, collector. Paintings on glass. 90. Subject: Protest #18265. Perry & Ryer. Office U.S. General Appraisers, New York. Received Dec. 29, 1890. No. of inclosures, 4.

12 EX. B.

NEW YORK, *December 16th*, 1890.

SIR: We hereby protest against your decision as to the rate and amount of duties to be paid on the goods, wares, and merchandise entered by us for consumption as follows:

Name of import vessel.	No. of entry.	Date of entry.	Date of liquidation.	Marks and numbers of packages and description of merchandise.
Str. "Rugia".....	191589	1890. Nov. 24	1890. Dec. 13	Mayer & Co., 1314—#1 /3, 3 cases of paintings.

We claim that the said paintings are entitled to exemption from duty under the special provision in the "free list" of the act of October 1st, 1890 (T. I. 677), for "paintings * * * specially imported in good

faith for the use of any society or institution incorporated or established for religious * * * purposes, and not intended for sale."

We pay the duties exacted under compulsion, solely to obtain possession of the paintings.

Respectfully,

PERRY & RYER.

Please address Joseph Treloar, attorney, No. 30 Pine street.

Hon. COLLECTOR OF CUSTOMS,
New York City.

13 (Endorsed:) 3406 A. 18265. Perry & Ryer. Rugia. Paintings. Custom-house, New York. Dec. 16, 1890. Received. 2486 P o. Vessel: Rugia. Entry: 1890, Nov. 24. Liq-ed: 1890, Dec. 13. Protested, 1890, Dec. 16.

That accompanying the letter of the collector aforesaid (Ex. A) was a report from the United States appraiser at New York describing the merchandise subject of said protest No. 3406 A 18265, which report is hereto annexed, marked " Exhibit C."

14 EXHIBIT C.

PORT OF NEW YORK,
APPRAISER'S OFFICE,
402 *Washington Street, December* 19, 1890.

M. W. COOPER, Esq.,
U. S. Appraiser:

SIR: Referring to protest #18265 of Messrs. Perry & Ryer against assessment of 45% duty on certain merchandise imported by them ex. " Rugia," Nov. 24, 1890, I have to state:

The goods consist of pieces of various colored glass, cut into irregular shapes and fastened together by strips of lead; upon the glass various figures, representing biblical subjects, have been painted. The glass thus painted has been subjected to a heating or burning process which fuses the colors into the glass and makes them permanent. The paintings in this instance have been executed by artists of superior merit, especially trained for the work, which attain to the rank of works of art.

The completed articles are intended to be used for decorative purposes in churches and when so used are placed upon the interior of the window frame of the church and are backed by an outer window of white glass.

The Department in various decisions (vide S. S. 3142, 4814, 9428, and others) has hitherto held that these articles were entitled to classi-

15 fication as paintings, but in its decision of Oct. 31, 1890, S. S. 10306, decides that in case of the concurrence of the collector at Philadelphia, in its opinion, they should be held to be dutiable at 45% ad valorem under par. 122, act of Oct. 1, 1890.

In view of this decision the articles in question were returned for duty at the rate assessed under par. 122, as painted glass windows.

The papers are herewith returned.

Very respectfully,

C. A. STEVENS,
Ass't Appraiser.

APPRAISER: Please state specifically whether the article is in fact a painted church window in form, fitted for setting in a gothic window frame.

J.

Dec. 20, '90.

Respectfully returned.

The articles in question may be fitted in a gothic window frame or in any opening of a similar shape. They are generally fitted or fastened on the interior of a window opening, for the reason that they require a transmitted light for the exhibition of the paintings on them. They are in character similar to those referred to in Department's decision of Nov. 21, 1890, S. S. 10374.

C. A. STEVENS,
Asst. Appraiser.

Dec. 22, '90.

16 Approved.

M. W. COOPER, *Appraiser.*

107–299.

(Endorsed:) 3406 A. Port of New York, appraiser's office, 402 Washington street, Dec. 19, 1890. C. A. Stevens, asst. appraiser. Subject: Protest 18265. Ferry & Ryer. Paintings on glass, "Rugia," Nov. 24, '90. Respectfully forwarded to the collector. Approved. M. W. Cooper, appraiser. 2486 P. o.

That on the 17th day of February, 1891, the sworn testimony of various witnesses was taken by the board in said matter, which testimony is hereto annexed, marked "Exhibit D."

17 EXHIBIT D.

In the matter of the protest 3406 A 18265, of Perry & Ryer, against the assessment of duty by the collector at the port of New York on certain "Paintings on Glass" imported per "Rugia" November 24th, 1890.

Testimony taken before the Board, February 17th, 1891.

HENRY A. BOUCHE, sworn, testified as follows:

Examined by Mr. TRELOAR:

Q. Mr. Bouche, are you an artist?

A. Yes, sir.

Q. Do you know the processes of producing articles such as those described in this case?

A. Yes, sir.

Q. State each in full, please.

A. The artist draws a cartoon, generally on a reduced scale, which is submitted for approval, and that cartoon is enlarged by the same artist to a full-sized drawing. Pieces of glass are cut from tracing made from the drawing and before the painting is started on they are all leaded up in temporary frames. Then the artist begins to paint on it, just as he would do on a piece of canvas. After the painting is done those pieces are all

taken away from the frame, put in a kiln, and burned. Those pieces very often have to be burned a second time, and the artist has to go over again painting them and finishing his work. After all the painting is done the pieces are put in a permanent frame of lead, which binds all the pieces together and renders the painting suitable for presenting.

18 Q. Please state the purpose of stained or painted glass.

A. In the olden time, in the 13th century, they generally used to be made to prevent the strong light from coming into the church; later on they began to be used as works of art, such men as Michael Angelo and others having made all the drawings for such glass.

Q. Are the articles known to you in your profession and business as stained or painted glass or stained or painted glass windows?

Mr. SIMONSON. I object to that question.

(Objection overruled by the board).

A. They are when they are only applied to ornamental work. When applied to subject or scenes, they are generally called figured windows.

Q. Will you state specifically the character of your profession?

A. I am an artist.

Q. Are you a painter?

A. I am.

Q. Do you draw the cartoons for these particular articles in question?

A. Yes, sir.

Q. Are the paintings sometimes executed from your cartoons?

A. Mostly every time.

Q. I would like to ask whether or not you consider stained or painted glass as synonymous terms?

19 A. In this country they are; on the other side they are not so considered. In this country stained and painted glass are the same thing; on the other side they are not. They generally call stained glass on the other side what is known as stencil work. Figured work is never called stained glass on the other side at all. It is a painting. A painting on glass is always admitted as a picture. They are admitted to the salon in Paris as a painting.

Cross-examination by Mr. SIMONSON:

Q. Are you familiar with any of the people engaged in this industry on the other side?

A. Yes.

Q. I have in my hand the Catholic Directory for this year. Just look at that advertisement and tell me how it reads there.

A. (Witness reads from page 125 as follows:) Stained glass for churches. Per square metre (nine feet square) grizzle and mosaic, from 50 to 70 frs.; stained-glass window with one subject, from 120 to 160 frs; grand scenes from 150 to 180 frs.; small medals from 160 to 200 francs.

Q. That is what you call a painting on glass?

A. It all depends on where it comes from.

Q. The artist draws a cartoon, doesn't he?

A. Yes, sir.

Q. After the artist draws the cartoon, the cartoon is so drawn

20 as to be cut up into the sizes of the pieces of glass to be used?

A. Yes.

Q. After the cartoon is drawn so, the glass is cut according to the size of the cartoon, isn't it?

A. Yes, sir.

Q. As a rule, how many people are engaged in painting those little pieces?

A. It all depends on the firm.

Q. In a large firm?

A. In a large firm generally the same man finishes his window except the leading.

Q. What is the general rule in regard to the majority of factories that do this work—the various pieces in this window?

A. I do not know.

Q. Have you ever sold or made contracts for these windows to any large extent?

A. I have been in that business to a large extent.

Q. How long is it since you were first engaged in this business?

A. About 2 years.

Q. Have you got any contracts that you made when you were first engaged in this business of contracting for windows?

A. Yes, sir.

Q. Can you tell me what you called them at that time; this kind of work with figures?

A. If I had thought I might have brought you all the contracts I have.

21 Q. You say where figures are on the windows they are called paintings on glass?

A. Yes, sir.

Q. How long has that been known as painting on glass?

A. On the other side it has been known ever since painting has been made. This advertisement (page 125, Catholic Directory) is made on the other side.

Q. Here is another concern I will show you, which I think is a foreign house; the concern of Gaudin (page 127, Catholic Directory). What does he start off there with?

A. Mr. Gaudin does not speak a word of English himself, so whatever has been put in here has been made by an Englishman.

Q. What does he call it?

A. He calls it "art stained glass," because there is no better term in English to express it.

Q. Would not "artistic stained glass" do it?

A. Yes, sir.

Q. Are you in business for yourself?

A. I am now; yes, sir.

Q. You have been in business for yourself two years?

A. Yes, sir.

Q. In this country?

A. Yes, sir.

Q. Are you connected with any foreign house?

A. Not directly.

Q. Are you indirectly?

A. Yes; I deal with a great many foreign houses.

22 Q. Are you engaged as agent for any foreign house?
A. No, sir; I used to be.
Q. When this window is all complete, or this glass is all complete and leaded up, what is it used for?
A. For an ornament in a church.
Q. Where is it placed?
A. Generally against some window.
Q. Is it not placed in a window itself?
A. Not always; no.
Q. In a window opening?
A. It is placed in a window opening; it has to be transparent.
Q. Then you mean to say that you put a sort of a double glazing?
A. Yes, sir.
Q. Then your contention is that the outside glass is the window?
A. Yes.
Q. And that the inside glass is not the window?
A. It is the picture; it is not the window.
Q. It is placed in the window opening?
A. Yes; and sometimes it is placed in screens.
Q. We are not talking about that; this particular piece of work is intended for window openings, isn't it?
A. To be placed against the window opening.
Q. What is the object of the outside glass?
A. To close up the church from the weather.
Q. To protect the church from the weather?
A. Yes.
23 Q. Wouldn't the inside glass do it?
A. No, sir.
Q. Have you ever seen any churches in this country with these stained glass figured windows without any outside windows?
A. Yes, sir.
Q. Isn't the outside window simply placed there to better keep out the cold from the church and to protect the window?
A. I don't think so.
Q. What is it for?
A. It is simply intended for the same use as a window generally is.
Q. Now supposing I had this window as you see it there, and supposing I put an outside window to that, which would be the window of the two, in your opinion?
A. If the other one is the first window, that would not be the window. It all depends on the building.
Q. If I had that window double glazed, which of the two, in your opinion, would be called the window?
A. The outside.
Q. And the inside you would call a window?
A. Certainly not.
Q. Do you know what the common ordinary term of a window means; what is a window?
A. I should consider the ordinary term of a window is simply an opening made of glass, light enough to let the light come through and protect yourself from the weather.

24 Q. Don't you know it to be a fact that in this country that either figured or ornamental stained glass is called a window?

A. Generally it is; yes.

Gen'l Appr. LUNT:

Q. What color of glass is used as a foundation work of these pictures?

A. All colors.

Q. Are the colors the same before they are submitted to the heat as they are after they have been submitted to the heat?

A. The fire changes the color. An outsider, though, would not know the difference between one that is burned and one that is not.

Q. Then it don't change it to the perception of a nonprofessional?

A. Except in the gold, where the gold is blackened. The gold colors change. The gold is a metal.

Q. Do you use other metals?

A. Sometimes.

Q. Are those changed any other color by being submitted to the fire?

A. Yes, sir.

Q. The black is changed to gold color, isn't it?

A. Yes; but it is only in the pure metal.

Mr. SIMONSON:

Q. Here is the Mulic stained glass. That is a foreign house, isn't it?

A. Yes.

25 Q. Doesn't that term apply to figures?

A. The Mulic stained glass is a national school of art.

Q. They call it stained glass?

A. You call it in America stained glass; in Germany you don't call it stained glass, no more than you do in France. It is simply an American term.

Q. What do they call it in Germany?

A. A painting on glass; so do they in France.

FREDERICK C. WITHERS sworn, testified as follows:

Examined by Mr. TRELOAR:

Q. You are an architect?

A. I am.

Q. Do you make designs and specifications for the building of churches?

A. I do.

Q. In making such designs and specifications for churches, please state the name that is given by you to articles such as those described here?

A. Stained glass we have always called stained or painted; I think they are synonymous terms; that is for the geometrical figures. There are two classes of work; one which I have always called fine art painting on glass, and the other the ordinary work which is done by stencil, or which an inferior kind of workmen can do.

Q. In making your specifications do you make that distinction between the two?

A. I don't make specifications. I have imported a great deal of glass from the other side for 30 or 40 years.

26 Q. If you were going to fill a memorial window, what would you call it; a fine art painting?

A. I always described them as that.

(Sample marked A was here offered in evidence.)

A. That (A) is a stained glass, or Grosail glass. That is a geometrical figure—that small pattern painted on it. That is a glass with geometrical figures on it. It is stained glass. That is one kind of glass. There is a glass (marked B and offered in evidence) which contains fine art painting. That is the distinction between the two. That (B), of course, it takes an artist to do. That is artistic work. That is a photograph from the glass itself. (Exhibit C here offered in evidence.) That (C) is a photograph of the window under protest, and shows the general character of it.

Mr. SIMONSON:

Q. Now, Mr. Withers, in this class of work, figured windows, what are they intended to be used for; this work that you are speaking of now, stained glass windows; that is what you call them?

A. Yes.

Q. Isn't it the common acceptable commercial term, known among people on this side of the water, that all that kind of work is known as stained glass windows?

A. To me it is called stained and painted glass windows; they are synonymous.

Q. But they are known as stained and painted glass windows, aren't they? That exhibit (B) is known as a stained and painted glass window?

27 A. That is a fine art painted glass.

Q. Stained glass window?

A. Yes, sir.

Q. Glass window; that is the usual form?

A. Yes, sir.

Q. Now the last witness made some contention here about outside glass—double glazing; does that change it any?

A. I should not think it would. I put in these windows, and there they are as a window.

Q. You put them in some time without double glazing, don't you?

A. Certainly.

Q. Does the double glazing, in your mind, change the character of that?

A. No.

Q. It is as much of a window with double glazing as without it?

A. Yes, sir.

Mr. TRELOAR:

Q. In making your specifications calling for glass windows, do you make in the specifications any distinction between fine art painting on glass and stained or painted glass?

A. Yes.

Q. Do you so describe it?

A. I do not specify it.

Q. Please state how you state it in your specifications.

28 A. I have imported a great many windows, and ordered them, as I said before, as fine art paintings on glass. I have never imported any other, because they can make them better in this country. The stained glass they can make better in this country.

Q. Would you accept as a fine art painting on glass, on your specification, an ordinary stained or painted glass?

A. No. I should not call that a fine art painting.

Gen. App'r LUNT:

Q. When you order fine art painting on glass, that is a specification of a particular kind of glass window that you require, isn't it?

A. That is on subject pieces, figured pieces.

Q. You recognize as stained or painted glass one that is a particular character of stained or painted glass?

A. Yes. It is synonymous; the glass is stained and it is painted on it.

Mr. TRELOAR:

Q. Will you state any reason why they are so called? Is it because of the foundation of the painting being glass?

A. Because the glass is stained.

Q. The foundation of the painting being stained glass?

A. Yes.

Mr. SIMONSON:

Q. Now, Mr. Withers, in speaking with a person desiring a window of that kind, you would speak of it as a stained glass window?

A. Yes.

29 Q. That is the general acceptation of the word. All the difference would be, you would bargain with him as to what subjects you would put into the window?

A. Yes.

Q. Most every person that orders a window desires various subjects, according to the name of the church or the particular wishes of the person. It is a stained glass window with a subject, isn't it?

A. Yes.

Q. That is the common acceptable word in this country, isn't it?

A. I should judge so, so far as I am concerned.

Gen. App'r SHARPE:

Q. These are two fair specimens of what we are considering, are they? Would that be called a painting (referring to exhibits marked A and B)?

A. The one marked B would be called a painting, and the one marked A would not.

Mr. SIMONSON:

Q. I will show you another one. What is that? (Sample offered in evidence and marked D.)

A. That is from a drawing, I suppose; it is not from a window. I should judge it is a painted window when it is done.

Q. With a figure in it, is that what you would designate as a painting on glass?

A. That is.

Q. But the name of it is a stained glass window, isn't it?

30 When you speak of a stained glass window, the common acceptation of the word painted or stained glass window is called stained glass window. Have you seen those windows as they were put up?

A. No.

Q. Do you know whether or not there is an outside to it?
A. Probably not.

Mr. TRELOAR:

Q. Mr. Withers, that is a drawing of the article in question. Would you call that an artistic painting on glass?
A. I should call that a painting on glass (referring to Exhibit C).

Mr. SIMONSON:

Q. Would you call that a stained glass window?
A. It is a painting on a stained glass window.
Q. This one, marked A, is considered an ornamental window, isn't it?
A. Yes.
Q. And B is simply considered a figure painting, isn't it?
A. Yes.
Q. And yet do they not all come under the term painting or stained glass window?
A. I should not call A a painted window. I should call B a painted window, but that may come under the name of a stained glass window, but A would not come under a painted window.

31 (The importers, through Mr. Treloar, counsel, admit that they are all windows.)

E. J. N. STENT, sworn, testified as follows:

Examined by Mr. TRELOAR:

Q. You are an architect?
A. Yes, sir, and decorator.
Q. You make designs and specifications for the building of churches?
A. Occasionally, and the decoration of them more frequently.
Q. When you make such specifications and designs, your specifications call for stained or painted glass; where do you obtain it?
A. If it is stained glass, in this country; if painted glass, in London. One is a manufactured article, and the other is the work of an artist.
Q. Do you regard the ordinary stained or painted glass synonymous terms for stained glass?
A. It is all one thing. It means ornamental work on glass.
Q. In calling for paintings on glass how do you specify them in your specifications?
A. They are specified by a certain subject, which I select and make a rough sketch of.
Q. Take this sample, marked C, painted on stained glass, what would you call it?
A. A painting on glass. A is a stained glass.
Q. Don't the term stained or painted glass refer to one the same as the other?

32 A. Stained or painted glass specifies ornamental work.

Mr. SIMONSON:

Q. Supposing I came to you and said I wanted you to get me up a stained glass window with the subject of our Savior.
A. I should correct your phraseology and say you wanted a painted window.

Q. What is your business?
A. I am a decorator and architect.
Q. Have you ever been engaged in the stained glass business?
A. I imported for 16 years.
Q. For whom did you import it?
A. For various churches.
Q. From whom?
A. From Mr. Holiday, of London; from Mr. Wesley.
Q. Were you an agent?
A. No, sir; I dealt through the church I was employed by.
Q. Is this marked "B" a painted glass window?
A. That is a painting on glass.
Q. Would it be a painted glass window?
A. I should not call it a window. It is used to fill an opening in the wall with another window outside of it.
Q. Then you say if a window is double glazed, that the inside glass is not a window?
A. The inside is a transparency.

33 Q. Supposing there had been no question in this tariff act in regard to the word "window," would that have made any differene in your opinion?

A. It would not in my phraseology. I have always spoken of it as paintings on glass.
Q. If you ordered a window, would you order double glazed—would you use that term?
A. If I ordered a stained glass window, stained glass window would be the glass proper. If I put in an expensive painting on glass, I should invariably put a window on the outside to protect the paintings on the inside; that is invariably the custom.
Q. Has this painting on glass, as you call it, got a ventilator?
A. It may have and may not have.
Q. Would the outside glass have a ventilator?
A. It probably would.
Q. A stained glass window is put in, or at least these paintings on glass are put in, window openings for what purpose?
A. To soften the light, sometimes.
Q. Do you know what the commercial term here in the city of New York or in the United States would be for that article [referring to sample marked B]?
A. Painting on glass.
Q. Wouldn't it be a stained glass window?
A. No.
Q. Would it be a painted glass window?
A. No; it would be a painting on glass.

34 Q. Would it be a painted glass window to the majority of people?
A. I do not think so. It represents a picture, and a picture is a painting; it is the same as a painting on canvas.

Q. Here is an advertisement which says, "stained glass windows, with one subject"—what would you understand that to be?
A. I should understand it to be a painting on glass surrounded by stained glass.

Q. The expression used here is stained glass window?

A. It is a generic term for the whole thing, if the whole thing is included in the advertisement.

Q. Is it a generic term for that kind of work as well as for ornamental work?

A. I do not consider it so.

Rev. P. BONAVENTURE, O. S. B., sworn, testified as follows:

Examined by Mr. TRELOAR:

Q. Are you an artist?

A. I am.

Q. In what line?

A. Oil painting, water-color painting.

Q. Where did you graduate as such?

A. I have studied at the Academy of Fine Arts in Munich.

Q. Have you ever seen the work, such as has been produced here—the production of them—in Munich?

A. Yes; to a certain degree.

Q. Are the persons employed in executing this work artists?

35 A. The men they have there are the best artists in Munich.

Q. The men applying the paint to make the figures on the glass—are they artists?

A. They are; because they can not use any other.

Q. You have seen this work executed in Munich; how would you describe that [witness shown sample "A"]?

A. That is a stained glass window. "C" is a painting made by first-class artists.

Mr. SIMONSON:

Q. You say that the ones that do the painting on the glass are all artists?

A. Yes.

Q. Have you ever been in the works and seen them painted?

A. I have, frequently.

Q. Do you know the rate of wages that these artists get?

A. I have never inquired, but I know they get high prices.

Q. You are positive they get high prices?

A. They do, certainly.

Q. In painting a window like that how many people do you suppose would be engaged in it?

A. It depends on the time in which it must be executed.

Q. Suppose it is to be done up quick?

A. They would put away other works of art and put in this, and employ others in order to be in time.

Q. Does the same man paint the drapery as paints the head?

36 A. The cartoon is made first, and then the sketch is made; the drawing is made first, then it is sketched on a second time; then the colors are applied as they want it in the painting. The one that can make a particular part best is put on that, and an artist looks after and superintends the whole thing.

Q. Is it a fact that in a window like that there might be engaged a dozen people, some of them of inferior merit?

A. There may be different grades of artists.

Q. Some of them would be of great merit and some of them be of very inferior merit. For instance, the men that paint the drapery work; do you mean to say that it requires any artist to paint that?

A. It does.

Q. To paint that on glass?

A. Certainly; it requires one who understands his art, and then one general director.

Q. You call these paintings?

A. They are.

Q. They are paintings on glass?

A. Yes.

Q. And paintings on stained glass, are they not?

A. Of course they must have a back ground. They are paintings on glass.

Q. And they are paintings on stained glass?

A. Yes.

Q. You would judge that to be for use in a window, would you not?

A. It would not be hung up on the wall. It is a transparent painting.

Q. Where would that be used?

37 A. Probably to fill out a hole in the wall.

Q. A hole intended to be used as a window, wouldn't it?

A. Not commonly, I don't think, because it would be too costly a thing to be exposed so. I have seen some of them that have been quite some distance from a window; so much so that you could get behind the picture, and the real window was on the outside of the house.

Q. These pictures are hung up in what is called the window opening, and they are permanently fastened there, are they not?

A. They are fastened there.

Q. Just the same as any window?

A. I do not know that.

Q. They are fastened there so you cannot take them down?

A. You can take them down, but not in a hurry.

Q. They are permanently fastened there, aren't they?

A. Yes.

Q. A great many of them have ventilators?

A. Yes.

Q. What is the use of the ventilators?

A. It is good for two things, as to let in fresh air, and the same time it would be good for a window if the pressure comes too hard.

Q. If I was speaking of these and called them stained glass windows, you would understand what I meant, wouldn't you? Suppose I looked at them and said they were stained-glass windows, you would know what I meant?

A. If I saw it.

Q. Wouldn't the term stained glass windows convey to your mind what I am trying to get?

38 A. No, sir.

Q. I would have to call them paintings on glass before you would understand. Supposing I came to you and asked you for a stained glass window; to get me up a stained glass window with the subject of the birth of our Savior, would you understand what I meant?

A. Certainly; I would have to.

Q. Isn't it a fact that a stained glass window is the common designation known for this class of work (B)?

A. No.

Q. Not on this (B), but on all of them. It is a generic term comprising all this class of work?

A. Not at all. That would be called a picture.

Q. Did you ever make a contract for this class of work?

A. No, sir.

Q. Have you any interest in this particular thing?

A. No, sir.

Q. Have you any interest in the particular church that this is to go to?

A. Not at all.

Q. Then you mean to say this is your own personal opinion?

A. My opinion is that what I have heard. Now, for instance, take the German term "Galaske made."

Q. That is glass painted?

A. No; but a painting on glass.

Q. Suppose I said painted or stained glass windows pictured; would you understand me?

39 A. Yes.

Q. That would be a figured window?

A. Yes.

Q. Then if I said a painted or stained glass window when pictured, you would understand a painting on glass?

A. Yes, sir.

HENRY A. BOUCHE, recalled, testified as follows:

Examined by Mr. TRELOAR:

Q. Mr. Bouche, do you import miniature paintings?

A. Yes, sir.

Q. On porcelain?

A. No.

Q. On pewter?

A. Yes.

Q. On copper?

A. Yes.

Q. On what else?

A. On gold.

Q. For what purposes are they used?

A. Adornments of the person.

Q. How are they produced?

A. By the work of an artist.

Q. Are they ever burned in?

A. The enamels on gold and copper are burned in.

Q. You are importing those now, are you not?

A. Yes.

Q. At what rate do you pay duty?
A. Always paid at the rate for paintings.
Q. They are now returned by the appraiser as paintings?
A. Yes. I tried to have them passed as jewelry, but they would not do it.
Q. You have some drawings or figures in your hand.
A. Yes. Those were always admitted as paintings on glass at 30 % under the old tariff. (Referring to sample E.) Those were in the Paris Exposition in the art department.

Mr. SIMONSON:

Q. Where were those pictorial windows? Were you at the last Exposition?
A. Yes.
Q. Where were those placed at the last Exposition; in what hall?
A. It depends on where they came from. Some were in the American section, some in the English, and so forth.
Q. Were not all these stained glass windows in the machineny hall?
A. No, sir.
Q. You state that you call this work with figures on it paintings on glass; a painted glass window when pictorial would be the same thing, wouldn't it?
A. It is hard to decide.
Q. Now I ask you if a painted glass window when pictorial would be what you call paintings on glass?
A. I suppose so; yes.
(Mr. Simonson here read section 1 (page 462) hearings before the Committee of Ways & Means, H. R., 51st Congress. He also offered in evidence section 760 of the Senate amendment No. 395, on painted glass windows, when pictorial; also section 757, in which those words were struck out. Mr. Simonson also offered in evidence the official Catholic Directory Almanac of the year 1890, which was objected to by Mr. Treloar.)

Mr. JOHN MORGAN, sworn, testified as follows:

Examined by Mr. SIMONSON:

Q. Mr. Morgan, you are a member of the firm of T. & J. Morgan?
A. Yes, sir.
Q. You are a glass stainer?
A. Yes, sir.
Q. You have been in that business how long?
A. 45 years.
Q. In the city of New York?
A. Yes, sir.
Q. You have made work similar to this? (Sample marked A.)
A. Yes.
Q. Similar to this? (Sample marked B.)
A. Yes.
Q. You have made work similar to this? (Sample marked D.)
A. It is produced in our manufactory.
Q. Have you made works similar to this? (Sample marked E.)

A. Yes. That is, figured windows.

Q. You have made all this class of work during the past 45 years?

42 A. I think I can say so; we have made such windows. There is one we are doing now, actually in hand. We have one like this (H) now being made.

Q. What do you call that?

A. Stained glass window.

Q. Have you ever known of any other name by which that could be designated?

A. They are always called stained glass windows.

Q. How many contracts have you made for this class of work during the time you have been in business?

A. It would amount up into thousands of contracts.

Q. How are they designated in the contracts?

A. Stained glass windows.

Q. With a subject, I suppose?

A. Then the subject is enumerated. That will distinguish them between an ornamental or figured window and a stained window. The whole of it is a stained glass window.

Gen'l App'r. SHARPE:

Q. You say the distinction between ornamental and figured work?

A. Yes.

Q. The ornamental is made up of figures, and the other is what is called by the French paintings on glass?

A. Figured work.

Mr. SIMONSON:

Q. The contract is for stained glass windows?

A. Yes, sir.

43 Q. And they have been known as such in your business for how long?

A. It is the English term for it; I never heard any other. They call a glass painter in England a glass stainer.

Q. You employ how many men, as a rule?

A. About 25. On one window we would employ three men. One man would paint the face, another would paint the less important parts, and a cheaper man would paint the inferior parts of the picture. It is divided into three branches.

Q. Is any part of it done by boys?

A. Well, hardly; they might do what we call the frame or mechanical work. It is done by about three men.

Q. It is a copy from a cartoon, isn't it?

A. Yes, sir.

Q. After the cartoon, I wish you would explain clearly now how this window is made.

A. After getting the order we get an artist to made us a cartoon, of charcoal, crayon, lead pencil, or whatever he uses. He draws it out the size we want it, and gives it to us. He goes to the glass stainer and makes a transfer of this, showing where the different pieces of colored glass will go.

Q. That cartoon will show all the leaded lines, won't it?

A. No; the glass stainer will put in the leaded lines; he is better qualified for that. Then one will paint the face, the other the drapery, and another the ordnary parts, and they sit it up against the window
44 and paint right against the light. After that it is burned. The enamel melts. After that it is soldered, and you might say it is finished then.

Gen'l Appr. LUNT:

Q. Who originally puts in the color of the cartoon?

A. The glass stainer.

Q. The glass stainer, then, is the man whose artistic talent is required to do the painting?

A. Half of the success of the window is done by selecting the colors of the windows. It is given to a man who has a special talent for coloring windows. He shows or directs how it is to be colored. I do it myself, for instance.

Q. Are you the artist who makes the cartoon?

A. No; I am not; I only color it.

Q. Do you color the cartoon before it is delivered?

A. I will take these little figures and I put the colors in by hand; I put it in as near as I can. If a man has a good eye for coloring, that is all that is necessary.

Q. You have been enumerating the different parts taken by the men; are you the colorist, the artist, or what?

A. I am a colorist.

Q. You do not put the colors on to the glass, but you color the design; is that it?

A. You understand the glass is colored before we give it to the glass painter. We pick out the colors from the glass as near as we
45 can get them. He selects the colors he wants. St. Joseph has a purple garment; that is fixed; he has always got a purple garment; and this purple glass is made by the 100 feet, put into boxes, and sent away.

Q. Then that don't have to be colored?

A. No, sir; all we do is to put in the shade—one uniform shade.

Q. Really the man who makes the colored glass is the glass stainer?

A. He colors it in the pot; blows it out. We only take this colored glass to fill it in to suit our pictures.

Q. What is that? [Here witness was shown a stained glass painting.]

A. Stained glass picture.

Q. Have you told all about the process of manufacture?

A. I think I have.

Q. It is leaded up and then it is framed, isn't it?

A. It is leaded up and put into a frame, or what we call a rabbit, to receive glass, made $\frac{3}{8}$ of an inch or half an inch deep. Into that rabbit the glass is set.

Q. When you double glaze a window do you use the same frame for the window?

A. You have one frame for the clear glass and one for the stained glass. The object of the outside glass is for protection and warmth. It

protects the glass from storms or stones. A leaded window is not so strong; it is put in for protection and comfort; they sometimes have a wire netting.

46 Q. Have you ever heard during your experience of 45 years of these windows being called anything else but stained glass windows?

A. Never heard any other term for them.

Q. When did you first hear the term "paintings on glass" as referring to these pictures?

A. Well, I don't know the first time I heard that, unless it was from the custom-house books.

Q. How long ago?

A. Probably two years ago, or at least at the time they got the windows for St. Patrick's Cathedral.

Q. But the general commercial acceptation of the word is stained glass windows?

A. Yes; stained glass windows in Trinity Church.

Q. Were they called stained glass windows?

A. Never called anything else.

Mr. TRELOAR:

Q. Mr. Morgan, you just identified Exhibit E as a figured window?

A. Yes, sir; that is a figured window.

Q. How are those figures produced?

A. By getting a man to draw a cartoon.

Q. After you have your stained glass, is it produced by painting?

A. It is obtained by painting.

Q. You say you have had several contracts for furnishing so-called stained glass?

A. Yes, sir.

47 Q. When you have a specification calling for such a figured window, how is it described in the specification; simply a stained glass window?

A. Yes, sir.

Q. Is it never called a figured window?

A. No; a stained glass window. That is the name by which it is always known.

Q. Did you just say that the specifications described a particular figure?

A. After you say stained glass window. Now, I want the figure of Faith or Hope in that window, but it is a stained glass window.

I ask you whether your contract describes by name or otherwise the figure that is called for to be furnished by you?

A. Always.

Q. Does it also require that that figure shall be produced by the artist?

A. No.

Q. That it shall be a fine art painting?

A. Never heard of such a thing.

Q. Mr. Morgan, this exhibit which you have just produced; is that figure produced by painting on that glass?

A. Why, most undoubtedly.

Mr. SIMONSON:

Q. Well, not the whole of the picture?

A. Well, and yet it is stained; the gold is stained and the ruby is stained. It is done with pigments.

Mr. TRELOAR:

Q. Pigment is paint, isn't it?

A. Yes.

48 Mr. SIMONSON:

Q. Was you at the Paris Exposition last year?

A. No; I was there the year before.

Q. Did you examine the stained glass windows there?

A. Yes.

Q. Figured and pictorial windows?

A. Yes.

Q. Where were they placed?

A. The buik of them was in Machinery Hall and on the stair-cases leading up to the gallery in Machinery Hall, where there were works of industrial art. The windows that were around this gallery were stained glass from different parts of the world. In the fine-art gallery there was no stained glass.

Mr. TRELOAR:

Q. Where were they placed—in openings in the wall?

A. In the windows.

Q. Do you understand that they were put there for the purpose of obtaining light?

A. To show the work. They probably had better light there. That is very good light there.

Gen. Appr. SHARPE:

Q. Those were not in the Machinery Hall because they were machinery. Why were they there at all?

A. Because it was a proper place where they could show the pictures of the stained glass windows.

Mr. SIMONSON:

Q. Do you know how they are classed in France and in Germany?

A. They are invariably put down in the decorative and
49 industrial departments.

Q. Were you ever through any of the stained glass factories on the other side?

A. I was through two or three in Paris.

Q. Does their system of working correspond with yours?

A. Exactly.

Q. Do you know anything about the wages they pay to artists, that they claim to be arsists, for this work? I am talking about the glass painters.

A. If a man got 50 francs in Paris, that is doing well. That would be about $12.00 a week. If they get $15.00 in London, the men that paint the faces, that is very good. In Austria I understand they average about $8.00 or $10.00 a week.

Q. What is the average wages of a glass painter here?

A. We have to pay a good hand $30.00 a week; that is the man who paints the face. The man that paints the drapery we only give $18.00. The man that paints the work around the figure is cheap labor.

Q. What is the average difference in wages?

A. Fully 100% difference in wages here and what they are on the other side.

Q. Have you visited and seen much stained glass work on the other side?

A. Yes; I saw quite a good deal.

Q. What famous churches?

A. The Saint Chapel is the largest one in Paris, and the Notre Dame, were the windows that I noticed.

Q. Were they in safe and sound?

50 A. Yes.

Q. Original windows?

A. I could not tell that.

Q. Did they have outside glazing?

A. I did not notice any that had outside glazing. This outside glazing has come up in the last 20 years. It has been encouraged by the architects. It is to keep the windows from leaking that they put this outside glazing there.

Mr. TRELOAR:

Q. When you were abroad did you make an effort to procure an artist?

A. No, sir.

Q. Do you employ artists now?

A. Yes.

Q. What wages do you give your artists?

A. I was just saying I paid him $30.00 a week, if he can rank as an artist, and I don't think he can.

Mr. SIMONSON:

Q. Was he employed in the glass painting business on the other wise?

A. Yes, sir. He was employed in a reputable house.

Mr. TRELOAR:

Q. Will you name that reputable house?

A. Zetler. We also have a man who worked with Mayer.

Q. They were not artists, you say?

A. I do not think a glass painter can rank as an artist.

Mr. SIMONSON:

Q. You can not paint a prospectus on glass, can you?

51 A. Prospectus and sky on windows are a failure.

Mr. RICHARD LANG, sworn, testified as follows:

Examined by Mr. SIMONSON:

Q. Are you a member of the firm of J. & R. Lang?

A. Yes, sir.

Q. What is your business?

A. Church work in all its branches.

Q. Have you been engaged in the manufacture of stained glass windows?

A. Yes, sir.

Q. For how long?

A. About 15 years.

Q. In this city?

A. Yes, sir.

Q. Have you ever manufactured windows like this [referring to sample marked "H"?]

A. Yes, sir.

Q. Windows like this marked "D"?

A. Yes, sir.

Q. Also "B"?

A. Yes, sir. In fact, all kinds of windows.

Q. Like Exhibit C?

A. Yes, sir.

Q. What are they termed in a commercial sense?

A. Stained glass windows.

Q. Did you ever hear them called by any other name?

52 A. You might call them figured windows if you were speaking of them and meaning to designate some special name for them. If it was a figured window you might ask me what subject you wanted to use.

Q. What has been the general term?

A. It is known in the trade as a stained glass window.

Q. Do you consider painted or stained synonomous terms?

A. Exactly the same thing. To stain a glass you have to put paint on. It is not a paint in every sense of the word, but it is used the same as a painter would use in painting.

Q. I suppose paint would apply to painting a house, a wall, or a canvas?

A. It applies to the material that you use. In this case it is paint in the sense of the word.

Q. Have you ever had any work done abroad?

A. I have.

Q. Frequently?

A. No.

Q. How was it designated?

A. We would say a window of such a size, such a subject; make a cartoon for the same and send us a price. If the prices are satisfactory, we send them the order.

Q. Did you ever hear them called paintings on glass? This one marked H, for instance.

A. Never heard it called such.

Mr. TRELOAR:

Q. You say in making estimates for stained glass; do you make estimates for stained glass?

A. Very often.

Q. Do you make any difference in your prices when you estimate

53 for stained or painted glass and prices for figured glass?

A. Always.
Q. Why do you make this difference in price?
A. Because the figured window is more expensive.
Q. Why is it? Because it is a work of art?
A. Not at all.
Q. You use artists, do you?
A. I do not call them artists.
Q. It is a painting in contradistinction to stained glass?
A. I do not take it so; no, sir.

Mr. SIMONSON:

Q. What is the difference?
A. The difference is, a stained glass window—that Exhibit A is a stained glass window—made purely of stained glass, made just exactly the same as the other one is made, with the exception that one is a figured window and the other is a geometrical window.
Q. The only difference is, the figured window is a little more costly than the pattern work, but as far as their being paintings on glass, a figured window and an ornamental window are exactly the same; same materials used in both cases?
A. Usually the same.

Gen. Appr. LUNT:

Q. The true artist is the man that makes that cartoon; there is where the art comes in.
A. There are men in our employ who could not make a cartoon, yet they can make a picture.

54 Mr. JOHN MORGAN recalled:

By Mr. SIMONSON:

Q. These two exhibits, A and H, would they be included in what is known in the trade as painted glass windows when pictorial?
A. H would and A would not.

Mr. ROGER WATTS, sworn, testified as follows:

Examined by Mr. TRELOAR:

Q. What is your business?
A. I am employed with a firm that produces painted windows; fine art paintings.
Q. You supply them for what purpose?
A. For churches principally.
Q. What would you call Exhibit A in your business?
A. It depends on whether I am in England or in America.
Q. What do you find it called in this country?
A. A stained glass window.
Q. What do you call Exhibit C?
A. A painting on glass, or pictured window.
Q. State, if you know, the process of producing a painting or a figure on glass.
A. O, yes; I know the process.
Q. Will you state it, please?

A. The process of the firms with which I am engaged, and with all the English firms, is that first of all the cartoon is printed by the artist; in our business the artist draws the cartoon more or less finished, but
55 makes a partially finished work of it. It then goes to the glass painters, who with us are artists, trained artists, and they copy the work and complete it and carry it much further than the artist who has originally drawn the cartoon. They complete it in a more finished manner.

Q. The figure then is produced by painting on glass?

A. Undoubtedly.

Q. And that part of the work is done by a graduated artist?

A. Undoubtedly.

Q. It is not formed by the stained glass or by the glass itself?

A. No.

Q. Have you supplied the so-called figured windows for churches in this country?

A. Yes.

Q. How are they invariably described in the specifications which call for your estimate?

A. I do not think we have had a specification, but in the correspondence they are referred to by all sorts of terms.

Q. What is the principal term?

A. Pictured windows. I have always found in America the term stained glass window invariably refers to this character of work like Exhibit A. This (A) is stained and painted also, but it is not a painting. It is not pictorial work; it is not figured work upon it. It is distinct from C. When I speak of a stained glass window the people do not understand me as meaning C. I have to speak of painting on glass, and
56 fine art painting, pictured window, figured window. If I speak merely of stained glass windows I always find that A is what is meant.

Q. You have heard Mr. Lang describe the process by which he produces this kind of work?

A. Yes.

Q. Does your process correspond with it?

A. Only to a marked degree. If we were to paint our windows in that way wholly we could not produce what we term a work of art. We could not produce an artistic painting in that way. For certain little particulars where we want high light we simply do it in the first place and remove it with particular kinds of painting. The principal part of the painting is precisely and exactly the same process as painting with the brush upon canvas or upon any other material.

Mr. SIMONSON:

Q. You say that you are engaged with a glass house here?

A. No; in England.

Q. And you are the agent here?

A. No; I am representing them here.

Q. Have your employers any outstanding contracts for stained glass windows, to furnish them here in this country; figured windows?

A. Yes.

Q. You have quite a number?
A. Yes.
Q. To be delivered here?
A. Yes.

57 Q. The designation that you place to that (C)—painting on glass; would a painted glass window when pictorial come under that designation?

A. If it were painted, yes.
Q. That designation would cover it, wouldn't it? A painted glass window when pictorial would cover that?
A. Yes.
Q. A painted glass window when pictorial would also apply to B?
A. I am not a very expert witness in that regard, because I am only familiar with it by having seen it occasionally used, and in the discussions of this recent tariff bill. It is a term which in England is never heard of.
Q. You have read, I suppose, works on stained glass?
A. Yes.
Q. Have you ever read Mrs. Jameson's work?
A. I have heard of her works.
Q. Have you ever read Mrs. Jameson's work on art?
A. She has never written a book with that designation.
Q. I am talking of the one referring to stained glass.
A. No, I am not familiar with it.
Q. She is an English lady, isn't she?
A. Yes.
Q. She calls it stained glass?
A. She would in England. In England it has a different meaning to what it receives in this country. In England the term stained glass window is a generic term. In this country it has a specific meaning.

58 Q. In England it is a generic term, and would include Exhibit B?

A. Yes; but not here.
Q. Any figured window would come under the designation of stained glass window, wouldn't it; under the general term of stained glass window?
A. Both of those we spoke of would.
Q. This Exhibit A would also come under the general term in England, wouldn't it?
A. No; it would not. If in England we should say stained glass window, we would mean something different from A.
Q. I am talking about the general designation of stained glass window; that would come under it, wouldn't it? You are sure the others would; Exhibit B?
A. Yes; I find that to be entirely different from what I find it in this country.
Q. They are all used in windows, aren't they; in window openings?
A. Yes; for the most part. It most frequently is. I have often seen it used in other positions. As a rule they are made in double rabbit frames. It is the same frame with two rabbits, one to receive this glass and one to receive the outside glass.

Q. When this window is put into the frame, isn't it tied across by various iron bars all through the whole length of the windows? Isn't it tied by a wire, by an iron bar which is fastened into the frame of the window?

A. Yes.

Q. And there are quite a number of these in the window, aren't
59 there?

A. Yes.

Q. Where is the iron bar placed generally?

A. Frequently in the wrought iron frame.

Q. What is the wrought iron frame fastened to?

A. That is placed against the window frame.

Q. Have they ventilators in the window?

A. Yes.

Q. What are they used for?

A. To open to let in the air the same as a window. Wherever there is an opening in a window there must also be a corresponding opening.

Q. In this iron frame that you speak of the double glazing also goes into this iron frame, doesn't it?

A. Sometimes it does; sometimes not.

Q. As a general rule?

A. That I could not say.

Q. It is one thing, isn't it?

A. No; not always.

Gen. Appr. SHARPE:

Q. You say that this class of work is usually put in windows, but that it is not always placed in windows; you have seen it used other ways; how?

A. It is used sometimes for screens. These are sometimes fastened into open panels, just as in a window, but in the interior part of the structure altogether. It is quite commonly done. We have done it in a number of cases. They could be used for fire screens. There must be light to go through. That is the reason they are more frequently put in windows.

60 That on the 6th day of March, 1891, the Board of General Appraisers rendered its decision in the matter of said protest, No. 3406 A/18265, a copy of which is hereto annexed, marked Exhibit E.

EXHIBIT E.

Before the U. S. General Appraisers at New York, March 6, 1891. In the matter of the protest, 3406a, of Perry & Ryer against the decision of the collector of customs at New York, as to the rate and amount of duties chargeable on certain mosaic glass windows, stained or painted, imported per Rugia, November 24, 1890.

Opinion by Somerville, general appraiser:

The merchandise covered by the invoice in this case consists of pictorial paintings on glass, designed for use as interior windows for a church. The glass is in mosaic pieces of irregular shapes, colored by being "painted" or "stained" as these terms are used by glass manufacturers, and fastened together so as to construct an ornamental window, such as is frequently devoted to memorial purposes in church edifices.

Upon the glass are figures representing various biblical subjects and characters, including St. Mark, the Evangelist, St. Peter, and many other pictorial representations of like kind, designed for religious instruction and edification.

The merchandise was ordered specially for the "Convent of the Sacred Heart" at Philadelphia, and is designed for use solely by this religious society, and is not intended for sale.

61 The articles were classified and assessed by the collector under paragraph 122 of the tariff act of October 1, 1890, which levies a duty of 45 per cent. ad valorem on "all stained or painted window glass, and stained or painted glass windows, * * * wholly or partly manufactured, and not specially provided for in this act."

The contention of the appellants is that the articles are entitled to free entry as "paintings" under the provisions of paragraph 677, which places on the "free list," among other enumerated articles, "paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale."

The latter paragraph is the same in phraseology as paragraph 759 of the "free list," as contained in the tariff act of 1883, and of corresponding paragraphs of previous tariff laws, as far back as the act of March 2, 1861.

The word "paintings" is no doubt sufficiently comprehensive to embrace paintings on glass, as well as on any other substance. And the practice of the Treasury Department, for a long series of years, has been to classify paintings on glass, of the kind under consideration, as "paintings" within the meaning of former tariff laws, at least when they attained to the dignity of works of art. (Syn. Treas. Dec. 9428, 4814, 3142, and 1996.)

62 But the provisions of the present tariff law of 1890 are entirely unlike those of any previous legislation on this particular subject. Not only is a certain duty now levied on "all stained or painted window glass or stained or painted glass windows" by special designation, but the same articles by name are excepted from the free list in section 757 of said act, which reads as follows:

"757. Works of art, the production of American artists, residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to any * * * incorporated religious society, * * * except stained or painted window glass or stained or painted glass windows." * * *

No rule of statutory construction is better settled than that all legislative acts, and especially parts of the same act relating to the same subject-matter in pari materia are to be considered, for the purpose of interpretation, as one homogeneous and consistent system, and are to be construed together as a whole. Each may explain, elucidate, or qualify the other, as seems reasonably to comport with the legislative intention, the ascertainment of which is the object and end of all construction. This rule is of special importance in the consideration of tariff legislation.

The evidence before us, including the samples of the merchandise, leaves no doubt as to its nature or the purposes for which it is designed.

63 The articles are stained or painted glass constructed for use as windows. It is immaterial whether technically they be "glass windows" or "window glass," as each is provided for specially. Nor is it material that they are intended for interior windows, as the law embraces both those that are interior and exterior. A window does not cease to be such because it is adjacent to another window on the outside of it. There are many houses with double windows.

The words "stained" and "painted" have a technical signification among glass manufactures, and embrace every customary process of coloring glass with pigments and fusion by heat. This will be seen from the article on "Glass Mosaic for Windows," treated of in Spon's Encyclopedia of Manufactures, Vol. 1, page 1084, and other works on the subject. They are used in the tariff act of 1883 (paragraph 143), where "painted" and "stained" glass and glassware are made liable to duty. The presumption is that Congress intended to attach to these words the meaning they have acquired in the trade. The description in paragraph 757 not only recognizes the fact that church windows of this kind may be "works of art," but may also be "pictorial paintings on glass," for they are excepted by name from each of these generic classes and declared not to be free, and this intention is made more unquestionably emphatic by expressly taxing them by the same name in paragraph 122.

It is manifest that the generic word "painting," as used in paragraph 677 of the free list, is not so minute or specific as the phrase
64 "stained or painted glass windows," used in paragraphs 122 and 757 of said act, and there described as embracing "pictorial paintings on glass" when in the form of windows. The more narrow and limited of these descriptions must control on well-settled principles, the more particular class being regarded as an exception engrafted on the one more generic. The recent instructions of the Treasury Department on this subject, communicated to the collectors of customs, have not been uniform. (Synopses 10306, 10374, and 10377.)

With the policy of levying duties on such articles designed for religious uses we have nothing to do. Our duty is to construe, not to make, laws.

The decision of the collector is affirmed.

The invoice and entry received with this protest are herewith returned. 2 enclosures.

HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
WILBUR F. LUNT,
Board of U. S. General Appraisers.

COLLECTOR OF CUSTOMS, *New York.*

65 And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decisions aforementioned, and that no other facts were ascertained by said board that such as are shown by said decisions and other exhibits hereto attached.

HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
WILBUR F. LUNT,
Board of U. S. General Appraisers.

(Endorsed): No. 385. U. S. circuit court, southern district of New York. In the matter of the application of Perry and Ryer for a review, &c., concerning certain "paintings" imported by them per "Rugia," November 24, 1890. Return of record, evidence, and facts by board of U. S. general appraisers. U. S. circuit court. Filed Mar. 28, 1891. John A. Shields, clerk.

66 United States circuit court, southern district of New York.

In the matter of the application of Perry and Ryer for a review, &c., concerning certain "paintings" imported by them per "Rugia," November 24, 1890. Suit "A," No. 385.

To the circuit court of the United States, for the southern district of New York:

The collector of the port of New York hereby applies for an order referring it to one of U. S. general appraisers as an officer of the court to take and return to the court such further evidence as may be offered by him.

EDWD. MITCHELL,
U. S. Attorney and Attorney for the Collector.

67 At a stated term of the circuit court of the United States of America, for the southern district of New York, held at the United States circuit court rooms in the post-office building in the city of New York, on the 13th day of April, in the year of our Lord one thousand eight hundred and ninety-one. Present: The honorable E. Henry Lacombe, circuit judge.

In the matter of the application of Perry and Ryer for a review, &c., concerning certain "paintings" imported by them per "Rugia," November 24, 1890. Suit "A," No. 385.

On the annexed application of the collector of the port of New York, through his attorney, Edward Mitchell, U. S. attorney for the southern district of New York,

It is ordered that this cause be referred to Hon. Geo. H. Sharpe, one of the U. S. general appraisers, as an officer of the court, to take and return to the court such further evidence herein as may be offered by the said collector, and that the importers or their attorneys have reasonable notice of the time and place of taking such further evidence.

E. HENRY LACOMBE,
U. S. Circuit Judge.

68 (Endorsed:) Suit "A," No. 385. U. S. circuit court southern district of New York. In the matter of the application of Perry and Ryer for a review, &c., concerning certain "paintings" imported by them per "Rugia," November 24, 1890. Application and order to take further evidence. Edward Mitchell, U. S. atty. and atty. for collector. U. S. circuit court. Filed Apr. 13, 1891. John A. Shields, clerk.

69 United States circuit court, southern district of New York.

In the matter of the application of Perry & Ryer for a review of the decision of the board of general appraisers as to rates, &c., of duties on certain paintings on glass, imported by them per Rugia, November 24th, 1890. A 385.

To the circuit court of the United States, for the southern district of New York:

The undersigned, a general appraiser under the act of June 10, 1890, to whom it was referred by this honorable court, by an order made March 31, 1891, to take further evidence in the above-entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated New York, Apl. 27, 1891.

GEORGE H. SHARPE,
U. S. General Appraiser.

70 United States circuit court, southern district of New York.

In the matter of the application of Perry & Ryer for a review of the decision of the board of general appraisers, as to rates, &c., of duties on certain paintings on glass, imported by them per Rugia, November 24th, 1890. A 385.

Testimony taken before George H. Sharpe, esq., one of the board of general appraisers, as referee, in the above-entitled matter, pursuant to an order of reference made by Judge Lacombe, dated March 31, 1891.

NEW YORK, *April* 23, 1891.

Appearances: For the importer, W. Wickham Smith; for the collector, Henry C. Platt, asst. U. S. attorney.

JOHN W. HUFFINGTON sworn and examined as a witness for collector.

By Mr. PLATT:

Q. What is your business?

A. I am in the picture business; buying and selling paintings, water colors, and works of art.

Q. How long have you been in that business?

A. For pretty nearly twenty years.

Q. Have you bought and sold paintings in the course of your business?

A. Yes.

Q. Prior to October 1, 1890, was there any trade meaning in
71 trade and commerce in this country of the term "paintings"?

Mr. SMITH. I would like to have an objection noted to this question as addressed to this witness, on the ground that it calls for expert testimony, as to which this witness has not been shown qualified and competent to testify, and further upon the ground that any testimony as to any commercial meaning of the term "paintings" is immaterial and irrelevant to this controversy.

A. Yes, there was, as I understand it.

Q. What was such trade meaning?

Mr. SMITH. That is objected to on the grounds already stated, and before the witness answers this question I desire to cross-examine him preliminarily as to his competency to testify on this subject.

By Mr. SMITH:

Q. What did you say was your business?

A. Buying and selling paintings, water colors, engravings, etchings, and works of art like that.

Q. Where is your place of business?

A. 71 Broadway.

Q. How long have you been in that business?

A. For about twenty years.

Q. Where do you buy these goods; in this country or abroad?

A. In this country.

Q. Do you sell them again?

A. Yes.

Q. You say that you have bought paintings. Do you mean paintings on canvas?

A. Yes.

Q. In oil?

A. Yes.

Q. Or water colors?

A. Both; but water colors are not on canvas.

Q. What are they on?

A. On paper, generally.

72 Q. And you have bought engravings?

A. Yes.

Q. And etchings?

A. Yes; both domestic and foreign.

Q. Did you ever buy any china with painting on it?

A. No.

Q. Did you ever buy any silk with painting on it?

A. Yes; I have bought silk with painting on it.

Q. When and how often?

A. I don't think I ever bought but two, and that was some time ago.

Q. Did you ever buy ivory with painting on it?

A. No.

Q. Or wood with painting on it?

A. Yes; because paintings are often painted on wood; oil is painted on panels sometimes.

Q. Glass with paintings on it?

A. No; never that I know of.

Mr. SMITH. I renew my objections on all the grounds already stated.

By Mr. PLATT.

Q. What was such trade meaning of the word "painting" on October 1, 1890, and prior thereto?

A. In the trade and technically it would cover a work of art, or paintings on canvas, or water colors on paper, because almost all water colors are painted on paper; they wash in better on paper, and the artist has a handling of his work better on paper than with any other medium—with

water color; and oftentimes in trade we buy and sell pictures painted on wood panels.

Q. Have you now in your answer designated all the kinds of paintings that were known in trade and commerce in this country as paintings prior to October 1, 1890?

A. Yes; I know of none other, technically speaking.

73 Q. During the course of your business experience covering twenty years, have you ever known in trade and commerce in this country painted or stained glass windows to be included within the term "paintings," as known in trade and commerce?

Mr. SMITH. That is objected to upon the express ground that there is not a particle of testimony in this case that this witness deals in "stained or painted window glass, or stained or painted glass windows," or has had anything to do with them in trade; and that, therefore, and until that is proven, he is not competent to give any testimony whatever as to the commercial designation of stained or painted glass windows.

A. I never have.

Q. How extensive has been your acquaintance with other dealers in paintings in this country prior to October 1, 1890?

A. It has been quite large.

Q. Have you, in the course of your experience, observation, and knowledge of the trade, ever known any dealer in paintings in this country to deal in stained or painted glass windows?

Mr. SMITH. That is objected to as leading.

A. I never have.

Cross-examination by Mr. SMITH:

Q. Did you ever hear of the expression "painted on glass?"

Mr. PLATT. That is objected to as immaterial.

A. Certainly; I have seen paintings on glass.

Q. And is that what they are called; "paintings on glass?"

74 Mr. PLATT. What does counsel mean by the word "they?"

Mr. SMITH. The things that he said he had seen; paintings on glass.

A. I have seen painting on glass. I have seen looking glasses painted

Q. Is that all the glass you have seen with painting on it?

A. I don't think I have ever seen any painting on glass, unless they were decorated looking-glasses.

Q. That is all that you have seen of it?

A. That is all that I can recall now. I know that I never saw a landscape on glass, only as I have seen decorated looking glasses, with a study of flowers, or something like that on them.

Q. Have you seen pictorial paintings on glass?

A. Will you explain the word "pictorial painting?"

Q. I can not explain it. You can either say you have seen them or have not.

A. You might call a flower a pictorial painting. I have seen looking glasses with paintings; decorated looking glasses.

Q. Have you ever seen a glass with a picture on it of a historical scene?

A. A biblical scene?

Q. A landscape scene, or any other picture of things or flowers?

A. Painted in free hand, like a canvass is; is that what you mean?
Q. I mean painted.
A. I am speaking of free hand art. I don't know what you are confining me to. I never have, in the broad sense of a "picture."
75 Q. When you use the term "painting" you restrict it, do you, to free hand work?
A. The technical words you use, certainly. We speak of technical paintings in our technology and works of art as painting which shall be painted, preferably on canvas, sometimes on a wooden panel with a brush, and which shall be all artist free hand work.
Q. And you say that in trade the term "painting" is restricted to that thing, do you?
A. Yes. Let me explain. When I say technically, I mean among picture dealers and among the picture trade.
Q. You mean by the picture trade people who, like yourself, deal in paintings on canvass or on panels, in engravings, etchings, &c.; is that what you mean by the picture trade?
A. Yes.
Q. And you say that among those the term "painting" is confined to work done with a brush on canvas in oil or in water colors on paper or occasionally in oil upon wood?
A. Yes.
Q. Did you ever deal in windows, pictorial windows, for churches or other buildings?
A. No, sir.
Q. Did you ever buy them in this country?
A. No, sir.
Q. Or sell them?
A. No, sir.
Q. Did you ever deal in china with pictorial representations upon it?
A. No, sir.
Q. You never bought it?
A. No.
Q. And never sold it?
A. No.
Q. And have had no commercial experience with regard to it?
A. No, sir.
76 Q. Do you keep a store?
A. Yes.
Q. A retail store?
A. Yes.
Q. A picture store?
A. Yes.
Q. At No. 71 Broadway, whereabouts in that building?
A. In the Arcade, at the corner of Rector street and Broadway.
Q. That is the elevated railroad building, and you have a little stand in the Arcade where you sell the various articles you have mentioned?
A. I do not say that I have a little stand. I say that I have a store.
Q. I don't mean to cast any reflection upon the size of your stand.
A. I have no stand. I have a store. There is quite a difference between a stand and a store. A man may have a stand on the street and

sell pictures. We pay $3,000 rent for the store, and I hardly think we would pay that for a stand.

Q. I accept the correction. Now, mention some of the picture dealers in New York that you have referred to as being in the same business as yourself?

A. I did not refer to anybody as being in the same business. I know all the trade. I did not refer to anybody. You asked me who I knew in the trade, and I said that I knew very many.

Q. You misunderstood me. You said that the term "paintings" had a certain meaning among people in the same general line of business as you, did you not?

A. Among dealers in our same line.

Q. And now I ask you to name some of those dealers?

77 A. There would be Knoedler & Co., Schaus, Fisher, Adams & Schwartz, Kroechig on Broadway near 34th st., Max Jacobi, William Pate & Co., and Bleeman, who import largely in paintings.

Q. All these gentlemen you have referred to have stores where they carry on the same kind of business as yourself generally, do they not?

A. Yes.

Q. Sell the same class of goods?

A. Yes.

Q. And when you described the commercial meaning of the term "paintings" you were describing it as understood among such gentlemen?

A. Yes.

Q. Do you say that among such gentlemen there is no such expression commercially known as the term "pictorial paintings on glass?"

A. I can not say that there is not; I know of none.

Redirect examination by Mr. PLATT:

Q. Do you deal in placques?

A. I do not.

Q. You make a distinction in your testimony between the term "painted" and the trade term "paintings," do you, or do you not?

A. I don't know that I should, because a canvass is a "painting" and it is "painted."

Q. And a house is "painted" is it not?

A. A house is painted

Q. And when you refer to the term "paintings" you refer to something different from the term "painted" do you not?

A. Yes; in that technical sense.

Q. And in your trade sense?

A. Certainly.

Q. From whom—I do not mean the name—but from what class of dealers do you buy your paintings and other works of art?

(Objected to as immaterial.)

78 A. They come mostly from American studios. I sell mostly American works, and I have a commission on foreign pictures. There may be a gentleman who wants to dispose of a picture, and I offer it for sale. There may be dealers who have pictures that they want to send down to the Arcade and sell, and we sell those for them. It is a commission sale in one sense for the artist. Our business is largely in American paintings from the studios.

Recross-examination by Mr. SMITH:

Q. Then you say that you make a distinction between a "painting" and a thing that is "painted?" You said you did make such a distinction?

A. Yes.

Q. Do you make a distinction between a painting and a thing which is painted which is a work of art?

A. A thing which is painted—between a painting and a thing which which is painted?

Q. Which is a work of art?

A. In the technical sense, a "painting" as I have explained, would cover a work of art on canvas in our line of business. Technically, it would cover simply that which should be painted, in the large sense, on canvas or in water color on wood panels, and which shall be framed with a gold frame, or with a stained frame for water colors; most oil paintings are framed in gold frames, and water colors in that which will suit it best—perhaps a white and gold frame; so that technically a "painting" which shall represent a work of art which shall be as I have explained on canvas, or a water color on a panel, in order to carry it
79 within the technical term of trade of a painting which we deal in, and which those dealers which I speak of deal in.

CHARLES S. ROLLINSON LAMB sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I am a designer for the firm of J. & R. Lamb, of this city.

Q. What is their business?

A. Church furnishers and church decorators.

Q. For how long have you been in that business?

A. For about fifteen years.

Q. Do you know the firm of Mayer & Co.?

A. Yes.

Q. Do they have a business or establishment here in New York.

A. They have an American branch in 23rd street, west of 6th avenue. I don't know the number.

Q. Do you recollect sending to Mayer & Co. for one of their trade catalogues?

A. I recollect directing our clerk to send for one.

Q. And in response to that did you receive one?

A. I did.

Q. I show you a trade circular, and ask you if that is the trade circular of Mayer & Co.

Mr. SMITH. That is objected to on the ground that no sufficient foundation has been laid for asking the witness this question.

A. That is one that my clerk received and gave to me.

Q. When was that?

A. I can not say; three or four years ago I should say; but really, I can not say definitely; it was not within a year.

Q. It was before October 1, 1890?

A. Yes.

(Said circular is offered in evidence, and marked Exhibit K for collector.)

80 Q. I show you a pamphlet entitled "Sixth Annual Exhibition of the Architectural League of New York," and ask you if you have ever seen that before?

A. Yes; I was instrumental in getting it up.

Q. What does it purport to be?

A. It is a catalogue of the Architectural League in New York, of their exhibition last December.

Q. This Architectural League comprises whom?

A. It is a group of men, architects, artists, sculptors, or, as their incorporated title gives the supplementary name, "those interested in architecture or the allied arts," which includes artists, &c.

Q. What does that pamphlet contain in general terms?

Mr. SMITH. Objected to, that the pamphlet speaks for itself.

A. It contains a list of all the pictures exhibited in the 5th avenue galleries last December, with illustrations by different members of the society and their friends, as well as, of course, the business side of it, which is advertisements.

Q. It contains many advertisements, does it not?

A. It does; and on them the catalogue is made successful financially.

Q. Do you find there an advertisement of Mayer & Co.?

A. Yes, on page 14.

(Page 14 of said catalogue is marked in evidence Exhibit L, for the collector.)

Q. Are you acquainted with the concern of Alfred Godwin, designer and manufacturer of stained glass, of Philadelphia?

A. I know of him; I don't know Mr. Godwin personally.

81 Q. Is it a reputable house?

A. It stands very well, being one of the first, I suppose.

Q. I show you a pamphlet or trade circular of Alfred Godwin, and ask you if you have seen that before, and know where it came from?

A. I have and do.

Q. Where was it obtained?

A. It was obtained by my clerk, through the regular line of the United States mail.

Q. And purports to represent what?

A. It purports to represent his business, which is stained glass; and it contains colored representations of stained glass windows.

Q. As designed and manufactured by him?

A. Or by his employees; I think he has a special designer.

By Mr. SMITH:

Q. Where did you get this book?

A. I did not get it; my clerk got it through the mail.

Q. When?

A. I should say that that was about a year and a half or two years ago; I am not quite sure about it.

(Mr. Platt offers the book in evidence. Objected to. Marked Exhibit M, for collector.)

By Mr. PLATT:

Q. I show you another pamphlet. Please describe that.

A. It is another catalogue of Mr. Alfred Godwin, the same firm of which I have just been speaking. This one has a price list on the back of church and house windows, which the other had not; and it was received by me in the same connection, and I think at the same time.

(Said book is offered in evidence. Objected to. Marked Exhibit N, for collector.)

82 Q. Do you know of Barry & Beck, stained glass works, of Boston, Mass.?

A. I have only heard of them. I do not know them at all. They are not an important house.

Q. I show you a pamphlet. Do you recognize that pamphlet as being one you received; and, if so, from whom and when?

A. In the same connection, and practically at the same time as the others; and by the same person, my clerk.

Q. Does this purport to be their catalogue and price list?

A. Yes.

(Said pamphlet is offered in evidence. Objected to. Marked Exhibit O, for collector.)

Q. Do you know in trade of the firm of Cox & Sons?

A. No, sir; they are out of existence.

Q. When did they go out of existence?

A. I really can not say, but I think about five years ago. It has had a number of different changes. I think the firm's name now is Cox Sons, Buckley & Co.

Q. There was such a firm prior to October 1, 1890?

A. There was such a firm.

Q. I show you catalogue and price list, and ask you if you know where that came from, and at what time?

A. I think this was brought into this country by the head of the firm, about sixteen years ago, when he was abroad; but of that I can not say definitely.

Q. Does that house have an American branch?

A. That house had an American branch—not this particular house, because, as I say, Mr. Cox, as an individuality, is not in the firm at the present time.

83 Q. It is Cox Sons, Buckley & Co. now?

A. So I understand.

(Said catalogue offered in evidence.)

Mr. SMITH. That is objected to as immaterial for any purpose. As stated by the witness, it was published sixteen years ago, and therefore it has no bearing on the commercial designation at the time of the passage of the present tariff act.

(Marked Exhibit P, for collector.)

Q. Are you acquainted in your trade with a publication known as The Architect?

A. There is an English publication of that name.

Q. I show you an illustration, headed The Architect, July 12, 1889—two illustrations of the same date—and I ask you if those were taken from that work?

A. They are part of the illustrations of that number, which I have received as a subscriber.

Q. Is that work taken among the trade—among the stained and painted glass window trade?

A. I should say so. It is primarily an architectural paper. These things are published in the interest of architects, and there are many of those which are in the interest of decorators.

(The two illustrations referred to from The Architect of July 19, 1889, are offered in evidence. Objected to. Marked Exhibits Q and R, for collector.)

Q. Are you acquainted in your trade with a publication known as The Builder?

A. Yes; that is an English publication.

84 Q. Devoted to the same purpose as the prior publication?

A. Yes.

Q. And well known in your trade?

A. Certainly.

Q. I show you an illustration headed "The Builder," September 7, 1889, and ask you if you know where that came from, and whether that is taken from "The Builder?"

A. It was received by me in "The Builder" of September 7th.

Q. Illustrating a stained glass window?

A. Illustrating a stained glass window, from a well known German painting.

(Said illustration offered in evidence; objected to; marked Exhibit S for collector.)

Q. I show you another illustration headed "The Builder, November 3, 1888." Did you receive that with that publication?

A. I did; and not only that, but I sent out for half a dozen other copies to give to some of my friends.

(Said illustration is offered in evidence; objected to; marked Exhibit T for collector.)

Q. I show you an illustration of "Old stained glass, Long Melford Church, drawn by E. L. Condey," and I ask you if you know that?

A. It is from the "British Architect," and one of a series of copies that I bought in London.

Q. Prior to October 1, 1890?

A. Yes; and is part of a collection on stained glass that I have been making, being very much interested in it, personally.

(Said illustrations offered in evidence; objected to; marked Exhibit U for collector.)

85 Q. I ask you about another pamphlet of Cox Sons, Buckley & Co. Do you know where that came from—a trade circular?

A. It was received in the same way as the other circulars. I happen to have two copies.

Q. Prior to October 1, 1890?

A. Yes.

(Said pamphlets offered in evidence. Objected to. Marked Exhibit V for collector.)

Cross-examination by Mr. SMITH:

Q. Where did you get this?

A. In the same connection with the others; my clerk got this.

Q. Your clerk got these about a year ago?

A. I can not say about the date. I think more than a year ago.

Q. How much more?

A. Cox Sons, Buckley & Co., are in 16th street now, and I think that came there very nearly a year ago; and, therefore, it must antedate two years.

Q. How did your clerk come to be getting all these circulars that you have produced here?

A. By writing for them.

Q. Did you order him to get them?

A. Yes.

Q. Did he get them under your orders?

A. He did.

Q. For what purpose did you want them?

A. Because I wanted to know what my competitors were doing in business.

Q. That was more than a year ago?

A. I should say that all these were two years or more old; as I have said before, I am not sure about the dates.

Mr. SMITH. To this one (Exhibit V) I note the specific objection
86 that it was issued in 1876, fourteen years prior to the enactment of the present tariff.

WITNESS. It has already been marked on this side as delivered from the New York branch.

Mr. SMITH. And it was published in 1876?

WITNESS. Yes.

EDWARD COLGATE sworn and examined as a witness for collector:

By Mr. PLATT:

Q. What is your business?

A. Manufacturer of stained glass windows.

Q. For how long have you been in that business?

A. For very nearly fifty years.

Q. Where?

A. In New York City.

Q. Of course you are familiar with the process of manufacturing such windows?

A. Yes.

Q. How extensive have been your dealings in stained or painted glass windows?

A. In what way?

Q. Have your dealings been large?

A. Yes; quite large.

Q. Are you largely acquainted with the trade, and with the people who deal in these articles?

A. Yes. I believe that our establishment is the largest one there was in the United States.

Q. What is the style of your house?

A. Colgate. I am the successor of Mr. Henry Sharp.

Q. Do you know, as a matter of fact, whether there are any dealers in thisc ountry, or have there been within the time of your business experience, who buy and sell stained or painted glass windows?

87 A. I don't know; of course there are lots of people who sell them, but I don't know of any who buy them.

Q. In what way, then, are they, and have they been, during the course of your business experience, dealt in?

A. If we receive orders for a window we manufacture it to order.

Q. The persons who buy the windows deal directly with manufacturers?

A. Yes; usually.

Q. Do you know any one, and have you known of any one, in the business of buying and selling stained glass or painted glass windows?

A. I don't know of anybody.

Q. In this country?

A. Not in this country.

Q. In the course of your experience have you become acquainted with the terms by which such articles have been ordered, contracted for, or sold in trade and commerce in this country?

A. Simply as stained glass windows.

Q. I ask you whether you have become familiar, and whether you know?

A. Yes.

Q. Was there in trade and commerce in this country and among dealers in such articles, prior to October 1, 1890, any trade designation for such articles as those in suit, to wit, painted or stained glass windows?

A. Not that I know of.

Q. By what terms were such goods bought or sold?

Mr. SMITH. That is objected to as immaterial, inasmuch as the terms by which articles are bought and sold are only material and proper for consideration in these cases when they establish a commercial desig-

88 nation between persons who both buy and sell; whereas this witness has just testified that he knows nobody in this country who both buys and sells, and that any terms by which these articles are called are applied to them either by the manufacturer, who executes them to order, or the consumer who orders them, and that what either of such persons may call them is immaterial to this controversy.

Q. I am alluding to the merchandise in this suit. You know what it is?

A. Yes.

Q. By what term in trade were such articles bought and sold?

A. As stained-glass windows.

Q. Is that the name by which those articles are known and were known in trade prior to October 1, 1890, in this country?

A. Yes.

Q. You have just testified that they had no trade term. Did you understand the prior question?

A. You have got me mixed up, one with the other. What I would understand is that in our work, and as is usual with manufacturers of

stained-glass windows, we receive an order for a stained-glass window, and manufacture it and sell it.

Q. I asked you a few moments ago whether there was any name for such articles in trade and commerce in this country prior to October 1, 1890, and you said, "No."

A. You asked me if I knew any difference.

Q. (Read.) "Was there in trade and commerce in this country and among dealers in such articles, prior to October 1, 1890, any trade designation for such articles as those in suit, to wit, painted or stained glass windows?"

A. I should answer that question yes.

89 Q. You answered it no.

A. I understood it to be, was there any difference between the two?

Q. No; I want to know whether there was any trade name for them?

A. Certainly there is; "stained-glass windows" is the general term that is used.

Q. Now, please describe to us the article or articles known in trade and commerce in this country, prior to October 1, 1890, as "stained-glass windows?"

A. There is only the one term that I can find for it, and that is, that you can make a stained-glass window of any design or shape or form you wish, and still it is a stained-glass window all the same.

Q. Will you describe fully to us what in trade and commerce was comprehended within that term "stained-glass windows?"

Mr. SMITH. That is objected to on the ground that the testimony of the witness already shows that there is no such trade name in the proper sense of that expression.

A. We make windows for domestic purposes, church purposes, chapel purposes, school purposes, and they all come under the same designation as "stained-glass windows."

Q. We know that they all do, but they are not all here, and we want you to describe to us the different kinds of articles that are known in trade here as "stained-glass windows"—in a general sort ot way?

A. Do you mean the different designs?

Q. I don't know that there are any designs. You have not stated that there are.

90 A. I do not say that there is any variety in that way other than you can designate the different designs. You can make a geometrical design, or a figure window, or a picture window, or a fruit window, just according to what you want to make your design for.

Q. I show you Exhibit C and ask you what is represented upon that exhibit as designated in trade and commerce in this country prior to October 1, 1890?

Mr. SMITH. That is objected to on the ground that there is no evidence in this case that there was anything known by this term in trade and commerce in this country on October 1, 1890.

A. That is what I would term a figure window, representing different groups; different subjects.

Q. Are those windows known by any other name, or were they known by any other name in trade and commerce in this country prior to October 1, 1890?

A. We call them stained-glass windows; that is about the only thing.

Q. You have not said yet that they were stained-glass windows?

A. They are stained-glass windows with different representations upon them.

Cross-examination by Mr. SMITH:

Q. Look at Exhibit A; that is stained-glass window?

A. Yes.

Q. For a church, is it not?

A. Yes.

Q. And were not such articles known and used in trade and commerce in this country for many years?

A. That is what I would term a geometric design.

91 Q. I ask you whether such geometric designs on stained-glass windows have not been in use in trade and sold in this country for many years?

A. Yes.

Q. And when the design is not a geometric design, but has a subject on it, like that of Exhibit C, you call that a figure window?

A. Yes.

Q. And this Exhibit A represents something which has been largely made and sold in this country for many years for churches?

A. Yes.

Redirect examination by Mr. PLATT:

Q. I show you from Exhibit M a representation of a window on page 2. Articles of that nature have been in use in this country for how long?

A. I suppose to my remembrance forty years.

Q. Under what name in trade and commerce in this country was a window represented by figure No. 2 known prior to October 1, 1890?

A. As a stained-glass window.

Q. There isn't any distinction in the trade between geomotrical figures and other figures on stained-glass windows?

A. This one you would term a single figure; that you would term a subject, and that a geometrical.

Q. Under what name in trade and commerce would you call those windows?

A. They are all stained-glass windows.

Q. Whether they have figures on them or not?

A. Whether they have figures on them or not.

Recross-examination by Mr. SMITH:

Q. You said that Exhibit A was know as a geometric window?

A. A geometric design.

Q. That particular kind of stained-glass window is known as a geometric window?

A. Yes.

92 Q. And Exhibit C—is that the particular kind which was known as a figure window? Is a window like that known as a figure window?

A. It would be the same as that one is.

Q. Answer the question. Exhibit C represents what are known as figure windows, does it?

A. That represents a panel which would be introduced into any other kind of a window.

Q. Would a window that contained pictures like this on Exhibit C be called a figured window?

A. If that was on the window alone it would be a figure window. If that was a window separated, as you see it there, with no other surroundings, it would be called a figure window, or a figure panel.

Q. Suppose it had surroundings; what would it be called?

A. It would come under the general designation of stained glass window.

Q. Would it not be called a figure window then?

A. No; we put that subject right in there, as we frequently do, to form a panel, and it would come under the designation stained glass window.

Q. And not a figured window?

A. Not a figure window.

Q. Suppose those pictures on Exhibit C constituted a whole window; that would be a figure window, would it not?

A. That would be a figure window.

Q. And so with No. 2; do you call that a figure window?

A. We would term that a stained glass window with the introduction of a figure in it.

Q. Would you call it a figure window—yes or no?

A. No; I would not call it a figure window, because it is only a small portion of it.

93 Q. Would it be generally known as a figure window?

A. You would call that a stained glass window; not a figure window.

Q. You call that then a stained glass window, and there are certain varieties of stained glass windows that are called figure windows, are there not?

A. Possibly; yes.

Q. Now, I ask you whether that is one of those that is called a figure window, No. 2, on Exhibit M. Is it, or is it not?

A. I would call that a stained glass window, with figures introduced in there.

JOHN MORGAN, sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. Glass stainer.

Q. How long have you been in that business?

A. For forty years at least.

Q. Where is your place of business?

A. 53 Bleecker street.

Q. What class of work are you familiar with in your trade?

A. I can say that I am familiar with all branches of stained glass work.

Q. With stained glass windows?

A. Yes.

Q. How largely have you dealt in stained glass windows?

A. I think we do about as large a business as any manufacturer in the United States, running sometimes twenty, twenty-five, or thirty men.

Q. How large an experience have you had in buying and selling stained glass windows?

A. We do not buy; we make.

Q. Do you sell?

94 A. Only by orders; everything is made to order.

Q. Is that true generally of the stained glass window trade?

A. Entirely true; there is no stock kept on hand.

Q. No jobbers?

A. No; we have nothing but fit.

Q. In the course of your business experience, have you become familiar with the trade terms of people who buy and people who sell stained glass windows?

A. Yes.

Q. Was there prior to October 1, 1890, any term known in trade and commerce in this country that applied to such merchandise as that in suit?

A. I think it has kept its one name here.

Q. I ask you whether there is any term for such merchandise?

A. There is a term.

Q. What term is it, or was it?

By Mr. SMITH:

Q. You have testified that you never bought any of these goods, have you not?

A. I never buy them.

Q. You make them?

A. I make them.

Q. To order?

A. To order.

Q. From what class of people do those orders come?

A. Chiefly from churches.

Q. So that the particular church that needs a window sends somebody to your establishment to order it; is that right?

A. That is right.

Q. For use to be put up in that particular church?

A. Yes.

Q. Any term that may be used in representing such articles, is
95 used by you, or by your representative, you being a manufacturer, and the representative of the church, which is the consumer?

A. Yes.

Q. And when you speak of any trade term, that is what you mean, is it? You mean the term that is used between you, the manufacturer, and the representative of the church, which is the consumer?

A. Yes; we use that term.

Q. And that is what you mean by "trade term" is it not?

A. Yes.

Mr. SMITH. I object to the witness stating what that trade term is, on the ground that by his own testimony it appears that it is not a trade term as the words "trade term" have been repeatedly interpreted by the courts.

By Mr. PLATT:

Q. (Read.) "What term is it, or was it?"

A. Stained glass windows.

Q. Have you seen the same term used to designate such articles in contracts or specifications for buildings?

(Objected to as leading.)

A. That term is used; yes.

Q. Did you ever hear any other term used for such merchandise as these in suit?

(Objected to on the same grounds.)

A. No.

Q. Does, or did the term "stained glass windows," as used and known in trade and commerce prior to October 1, 1890, include windows with figures upon them as well as any other designs?

96 Mr. SMITH. That is objected to as leading; and also on the ground that the witness has already testified that there was no trade term in this country within the proper meaning of that expression.

A. That is a well known term which embraces them all—stained-glass windows.

Q. With or without figures?

A. Yes.

Q. Do you know anything about the stained-glass windows that were put into Grace Church, in this city?

A. Yes; I am quite familiar with them.

Q. How familiar?

A. We put them in for them. We did what is called the glazing.

Q. Do you know under what name they were ordered?

(Objected to as immaterial.)

A. Do you mean the marks on the cases? They were marked "stained-glass windows."

By Mr. SMITH:

Q. Do you mean the marks on the cases?

A. On the cases or packing boxes.

Q. That you sent them up in?

A. Yes.

By Mr. PLATT:

Q. That who "sent them up in?"

A. They were imported windows.

By Mr. SMITH:

Q. You say that they were marked on the boxes "stained-glass windows?"

A. Yes.

By Mr. PLATT:

Q. On the original packages?

A. Yes; on the original packages, "Stained-glass windows, with care."

Q. Did some of these have figures on?

A. They are all figure windows, all picture windows.

Q. When were they put in?

A. Probably six or seven years ago; and the great big chancel

97 window, it may be as much as fifteen years ago that we put that in.

Q. But some have been put in within a few years?

A. Yes; within twelve months, I think, one has been put in.

Q. Do you know anything about the windows in this suit, where they went to?

A. If I recollect rightly they went into the Convent of the Sacred Heart at Philadelphia.

Q. Did you see those windows after they were put up?

A. Yes.

Q. Personally?

A. Yes.

Q. When?

A. Ten days ago.

Q. Describe them.

A. They were two-light windows; that is, a double window, with two lights, with a mullion down the middle. In the upper part there was a single representation of a saint or figures, and on the lower part of the window there were some pictorial illustration' of some incident in the life of a saint; the balance of the window was filled up with geometrical patterns, and in the lower part of the window there was a part left to swing open for ventilation.

Q. It had a ventilator in it?

A. Yes.

Q. Look at Exhibit C. Does that represent a part of those windows? And, if so, state which part.

A. I don't remember any of these panels, but they were much of this style.

Q. That does not represent the entire window?

A. No; this is only the lower panel, if it was used in those windows.

Q. Then that is only a picture of a part of those windows?

A. That is all.

98 Q. How were those windows fastened in?

A. There is an iron saddle bar that runs across and the windows are secured to the frame.

Q. I am talking about these windows in Philadelphia. How were they secured?

A. I say that they are secured with these iron bars, by ties twisted around these iron bars; and it is puttied around the edges like an ordinary pane of glass, nailed down or tacked down.

Cross-examination by Mr. SMITH:

Q. In describing these windows, you said that you saw them ten days ago.

A. About ten days ago.

Q. Were you down there in the convent?

A. I was.

Q. How many windows did you see?

A. Probably seven or eight.

Q. How do you know that the windows which you saw were the windows that were imported by this invoice and entry here?

A. I can only identify it by the class of work. We can tell where the work comes from by the method it is done in. We can tell French work, or English work, or German work.

Q. The only fact that you base your testimony that you have seen the windows that were imported by this invoice and entry is that you went to the Convent of the Sacred Heart and saw there a number of windows which you recognized as German work; is that so?

A. I said *if* they were the windows. I qualified my statement; I do not say they are.

Q. You don't know whether they are or not?

A. No, sir.

99 Q. When you wish to distinguish between the different kinds of stained window glass, how do you distinguish between them?

A. We begin on the plain windows and then we begin on these pattern windows.

Q. Those you call pattern windows, like Exhibit A?

A. Yes.

Q. A geometrical pattern?

A. Yes; a pattern or geometrical, either. Then we have windows that we call emblem windows; then we move up a degree to where we have a single figure in a window.

Q. When you have a single figure in a window, what do you call it?

A. Figure windows. Then we have groups of figures, where there are two, three, or six figures represented.

Q. What do you call them?

A. We call them picture windows. Figure windows are usually in groups, figures or picture windows.

Q. Does that exhaust the class?

A. There is a picture window or a group in Exhibit H.

Q. Were you one of the gentlemen who went down to Washington when the tariff act was being gotten up to represent this branch of industry, before the Committee on Ways and Means?

A. Yes.

Q. And there were a number of you there?

A. At the second meeting there was only two.

Q. Did you make such representations as were made to the Committee on Ways and Means; or were you represented before that committee by counsel?

(Objected to as immaterial.)

A. I had counsel.

100 Q. Who was your counsel?

A. Mr. Simonson.

Q. Were you present when whatever representations that were made by Mr. Simonson, your counsel, were made to the Committee on Ways and Means?

A. I was right by him all the time.

Q. I ask you to look at paragraph 757 of the McKinley tariff act, the act now in force. Please read that over, either to yourself or aloud, as you prefer.

A. This appears to be the substance of what we asked for.

Q. Have you read that paragraph which I showed you, 757?

A. Yes.

Q. Now, I call your attention to the words of that paragraph "except stained or painted window glass or stained or painted glass windows." I

ask you if that language was inserted in that paragraph at your suggestion or by your request?

(Objected to as immaterial.)

A. I think we asked for stained-glass windows. I am pretty sure of that.

Q. That you asked to have excepted stained-glass windows?

A. Yes.

Q. And not stained or painted window glass, and painted or stained glass windows?

A. We did not word it like that; they have transposed the words; we simply asked for stained-glass windows.

Q. You asked to have an exception made in that section of stained-glass windows?

(Objected to as immaterial.)

101 A. I think that is the matter, yes; stained-glass windows; to place a duty on imported stained-glass windows.

Q. You asked—either you personally, or your counsel in your presence—to have the words "except stained-glass windows" inserted in that paragraph?

(Objected to as immaterial.)

A. I couldn't say anything more than that we had a printed brief that we handed in showing what we asked for, and what we asked for is printed in the reports.

Q. That is what you asked for?

A. For a duty to be placed on imported stained-glass windows.

Q. I don't ask you that. I ask you whether you asked that in this paragraph of the free list that there should be included an exception of stained-glass windows?

(Objected to as immaterial.)

A. Yes; we asked to place a duty on imported windows.

Q. You do not yet answer my question. I don't ask you what duties you asked to have imposed or what rate of duties, but I ask you if you asked the Committee on Ways and Means to place in that paragraph 757 an exception of stained-glass windows. Now, will you answer that question yes or no?

(Objected to as immaterial).

A. The exception to stained-glass windows?

Q. An exception of stained-glass windows.

A. We asked to be protected and impose a duty on foreign work. That is what we asked for. I cannot think of any other word.

Q. Did you ask to have any alteration made in this paragraph

102 757 of the tariff law as compared with this language in the previous tariff act. Answer that question by yes or no.

(Objected to as immaterial.)

A. I will have to go back to what I have already stated. We asked for a protection for stained-glass windows.

Q. I insist upon your answering my question yes or no.

A. Will you state it over again?

Q. (Read.) "Did you ask to have any alteration made in this paragraph 757 of the tariff law as compared with its language in the previous tariff act?"

(Objected to as immaterial; the section referred to not having been enacted at that time.)

A. What we asked for is right in there.

Q. That is what you asked for?

A. Yes; for protection.

Q. Is the language of that paragraph as it now stands what you asked for?

A. Let me see if I correctly understand it.

Q. You can read it fifty times, if necessary, and take half an hour for doing it, if necessary; but I want you to answer that question squarely.

(Objected to on the ground that it does not appear in the testimony of this witness that he submitted the language of any amendments to the committee, and as immaterial.)

A. I think the substance of our application is right in that book, which Mr. Simonson is reading now.

Mr. SMITH. Will you, Mr. Simonson, allow me to look at that book?

103 Mr. SIMONSON. This is the testimony before the Ways and Means Committee. Mr. Morgan was not there.

Q. I want you to state whether the words "except stained and painted glass windows" and "painted and stained glass windows" which you find incorporated in paragraph 757 of the free list were inserted therein at your request?

(Same objection.)

Q. We did not ask for it in so many words as you have got it here. We asked for simply protection as American glass stainers.

Q. Did you not suggest to Congress, or to its committee, or were you not consulted about the language in which that protection, as you call it, should be afforded to you?

(Same objection.)

A. No; it is not in the language that is used here; we used something better and stronger; they did not give exactly what we asked for.

Q. Will you give the words you asked for?

(Same objection.)

A. We asked for protection.

Q. I do not want "protection." You say that you asked for certain words which were better and stronger. Now, I ask you to state what those words were?

(Same objection.)

A. I can not remember the exact phrasing of the application we made.

Q. Will you give it as nearly as you can remember it in substance?

104 A. Yes: We, the people of the glass industry in this country, wish to be protected; and we asked them to kindly consider our case of protection.

Q. Didn't you direct the attention of the committee, or did the committee direct your attention, or was the subject discussed between you, as to the language and phraseology of paragraph 757?

A. No, sir; I don't think it was.

Q. You don't think it was?

A. I don't think it was discussed. I think they simply took our brief or petition that we handed in, and we got what they saw fit to give us; that is about what it was.

Q. You say you put in a petition to the Committee on Ways and Means for protection of your industry?

A. Yes; I believe it is in the book; that the petition is in it.

Q. Will you let the book alone and tell me what you put in?

A. I can not remember the phrase.

Q. I don't ask you the phrase. Was it a petition for protection to your industry?

(Same objection.)

A. It was.

Q. And in response to that petition the phraseology of the present tariff law was made, was it?

(Same objection.)

A. How is that?

Q. Was it in response to your petition that such changes as have been made in the language of the tariff law with reference to these articles were made?

A. I think so.

Q. Do you undertake to say positively that this particular para-
105 graph of the tariff act, about which I am now inquiring, paragraph 757, was not the subject of discussion between you and the Committee on Ways and Means or some members of that committee?

(Same objection.)

A. We saw some of the members and talked the matter over and asked them if they would kindly consider our petition.

Q. Did you talk over paragraph 757?

A. As it reads here——

Q. As it reads here or as it reads in the former tariff?

A. We had no conversation on the past law. The man that really went on first and had a talk with the committee is Samuel M. Adams. We only followed up the work that he had done.

Q. Did you have any conversation with the committee?

A. Not directly; not before the board; we did not.

Q. Did you have any conversation with any member of the committee?

(Same objection.)

A. Mr. Baine, I think, I had a conversation with.

Q. Did you, personally?

A. I was by the side of my counsel at the time the conversation was going on.

Q. Did the counsel, in your presence, direct the attention of the committee to paragraph 757?

(Same objection.)

A. I presume they drew attention to the matter in hand and to what they wanted done.

Q. I don't ask you to presume anything. I ask you as a mat-
106 ter of fact, within your knowledge, did he or did he not?

A. He drew him to the paragraph that concerns our business, whatever the number was.

Q. Do you consider that that paragraph concerns your business?

(Same objection.)

A. I should say it did.

Q. Therefore, when you say that he drew his attention to the paragraph that concerned your business, you mean that he directed his attention among others to that paragraph?

(Same objection.)

A. The only one that we was interested in was this paragraph about stained-glass windows.

Q. No. 757?

A. I suppose that is the correct number.

Q. Look at the number and see?

A. Yes; if it covers us.

Q. Did your counsel direct the attention of the committee, or of the members of the committee, to that paragraph?

(Same objection.)

A. Anything relating to stained glass that was in the paragraph that he directed attention to—757 or any other number—I am at a loss to place it. I say that the numbers were changed from time to time; but this is really the essential part of our visit—concerning the duty on stained glass.

Q. Were you familiar with the language of the paragraph in the prior law in the act of 1883, which related to the same subject-matter as that contained in paragraph 757?

A. Yes; I recollect how it read. All stained glass paid duty,
107 and there was some arrangement so that they got stained glass free by calling stained glass a work of art; and that is the way they got it through. The old duty was laid on painted, stained, or cut window glass; and they got it through as "works of art."

Q. And at your request there was inserted in paragraph 122, which provided for various articles of glass, a specific provision for "stained or painted window glass and stained or painted glass windows," was there not?

(Same objection.)

A. We were never asking for anything more than stained-glass windows.

Q. Did you ask to have "stained-glass windows" specifically provided for in that paragraph at 45 per cent?

(Same objection.)

A. We did not specify any sum, but left it to the committee to fix what sum they saw fit. I do not think we mentioned any sum. We left it to the discretion of the commission.

Q. I want to know whether you discussed with the committee, or whether your counsel discussed with the committee in your presence, the provision of the free list in which those articles had formerly been exempted from duty.

(Same objection.)

A. I think we only discussed the matter with Mr. Baine.

Q. Did you discuss that matter with Mr. Baine?

(Same objection.)

A. About stained-glass windows? We certainly did.

Q. Who was Mr. Baine?

A. The chairman of the committee on glass.

108 Mr. SIMONSON. He was one of the committee of conference. The witness is mixing up the Ways and Means Committee with the conference committee.

Q. Now, I ask you to swear one way or the other, yes or no (and I don't care which), whether there was discussed in your presence by any member in your business, or by any counsel that you had to represent you, with the Committee on Ways and Means, or with any member of that committee, the provision of the free list under which articles of this character had formerly been exempted from duty.

(Same objection.)

A. That matter was attended to by S. M. Adams, who carried our petition, and he had a conversation before the Committee on Ways and Means.

Question. Were you present?

A. I was not there then. He is a glass-stainer and in our business.

Q. Have you not repeatedly stated to various persons that this exception in paragraph 757 of that act was inserted at your request and by your suggestion?

(Same objection.)

A. As regards the protection, it certainly was at our request.

Q. It was inserted then at your request and by your suggestion?

(Same objection.)

A. We have asked for it right along, for protection.

Q. You have alluded to Mr. Adams. Was he your accredited representative before the Committee on Ways and Means?

109 (Same objection.)

A. Yes.

Q. He was sent down there to represent you?

(Same objection.)

A. To represent the glass-stainers.

Q. I find in this report here, which purports to be an official report of the hearing before the committee of conference of the Fifty-first Congress, first session, on the revision of the tariff, under the subdivision "Stained glass," on page 462, that Mr. Adams stated: "Mr. Chairman and gentlemen of the committee, I appear on behalf of the glass-stainers of the United States, the men who furnish the stained-glass windows for the churches and public buildings." Is that statement true, as far as you know?

(Same objection.)

A. There is the book.

Q. I do not ask you about the book.

A. I was not there.

Q. Was he authorized to make that statement—that he represented this trade?

A. He was sent there to do the best he could.

Q. For this trade?

A. For the glass trade.

Q. He stated, near the bottom of page 462, "It is a beautiful art." Do you endorse that statement made by him?

A. It is an industrial art.

Q. "It is a beautiful art." Do you endorse that statement made by him?

A. All right; let it go.

Q. It is true, is it?

A. It is an art; yes.

110 Q. I will ask you once more, and for the last time, whether or not it is true—and I remind you that you are on your oath and ask you to answer the question without any equivocation or dodging—whether the words in paragraph 757 of this act, which you have before you, by which there is excepted from that provision "stained and painted glass" and "painted and stained glass windows," were not inserted there by the request of the dealers in and manufacturers of stained glass in this country or their counsel representing them. I ask you to answer that question, yes or no, on your oath.

(Same objection.)

A. Well, they were taking this from the printed petition we sent to them, and they formulated them words from the printed petition.

Q. Have you a copy of that printed petition?

A. I think I have.

Q. Have you got it here?

A. I think it is here.

(Mr. Simonson says it may be found in the Report of the Committee on Ways and Means.)

Q. Look at the article on page 463, which is entitled "Memorial from glass-stainers" and which is signed by William Gibson & Sons, J. K. Lamb, J. J. Morgan, and John Morgan, and state whether that is the printed petition to which you have referred in the answer which you last gave.

A. This is the substance of the petition. There were some other matters in the petition, but they have condensed it. They have not put it all in, but they have put in the essence of what we asked for, protection.

111 Q. So that this on page 463 is a fair statement of the substance of the petition.

A. It is.

Q. Now, I ask you whether it is your understanding that the change made in paragraph 757 of the free list, which made an exception of stained and painted window glass and of painted and stained glass windows, was made by the committee or by Congress in that response to that petition?

(Same objection.)

A. This is what they gave us and this is what we petitioned for.

Q. And that is all that you care to say about it?

A. This is what they gave us.

Q. This is what you asked for—the petition is?

A. Yes.

Q. And what is in there is what they gave you?

A. This is what they gave us.

Q. But you will not state whether before Congress, or any committee of Congress, or any member of a committee of Congress, you either discussed, yourself or heard discussed in your presence the language of that excep-

tion of "stained or painted window glass or stained or painted glass windows," in paragraph 757?

(Same objection.)

A. We discussed the subject of stained-glass windows, but whether in that particular form or not I do not know but the whole matter and subject with us was stained glass windows. I can not think of anything else. We had nothing to ask for but that.

112 Q. Did you make a request for legislation and then leave the language of the legislation entirely to Congress?

A. In our petition we said that we were glass-stainers, making stained, glass windows; and that was the material and substance of what we wanted protection on.

Q. Did you make a request for legislation and did you leave the language of the legislation entirely to Congress?

A. I think we did. We made a specific demand on articles for them to give us, and if they have changed it or altered any words I cannot account for it.

Q. I will ask you one more question, to which I want you to say yes or no. Will you swear that before that committee, or a member of that committee, the express language of that paragraph, 757 in the free list, was not discussed in your presence?

(Same objection.)

A. Yes; it must have been discussed.

Q. It was discussed, was it?

A. Yes; the subject was stained-glass windows all the time.

By Mr. PLATT:

Q. Were you personally present at any meeting of the Committee on Ways and Means?

A. No, sir. Do you mean before the body?

Q. Before the full committee.

A. No.

Q. Were you ever present before the conference committee of Congress on this subject?

A. No; I was never before the committee.

Q. You have been asked something in relation to what windows you saw at this convent. Did you see all the windows in the convent?

113 A. All the windows that were set in place. There were seven or nine.

Q. You saw all of them, did you?

A. I saw them; yes. It is the convent of the Sacred Heart that you are alluding to.

Q. Yes. I am speaking in relation to the windows which you say are the windows in suit. Could you tell from their appearance how long they had been put in?

A. They could have been in only a few days, because the putty was quite soft. I judge from that that they were but a few weeks in.

Q. You have been asked as to the expression describing the making of these windows as a "beautiful art." What kind of an art is it?

A. It belongs to the decorative or industrial arts. To the decorative, I suppose, is really where it belongs.

Q. You have been asked concerning certain specific windows by the counsel for the importer, and you have stated that some were called "figure windows" and others what?

A. They are all embraced under stained glass.

Q. I am referring to what you called them when you said that some were "figure windows" and others were not.

A. That is a stained-glass pattern window and that is a stained-glass figure window. They are both done on glass.

Q. You say that Exhibit A is a stained-glass pattern window?

A. Yes.

Q. And Exhibit S is what?

A. A stained-glass figure window.

114 Q. And there are others with emblems on them, are there not?

A. Yes.

Q. What do you call those?

A. Stained-glass emblematic windows.

Q. And, as I understand your testimony, there are various subdivisions of stained-glass windows?

A. That is exactly it; they are divisions of the kinds and sorts.

By Mr. SMITH:

Q. I notice that your attention has been directed by counsel for the Government to certain testimony that you gave before recess. Have you talked over the testimony that you gave before recess with anybody during the recess?

A. With Mr. Lamb.

Q. With anybody else?

A. With Mr. Simonson.

Q. I notice that since the recess, in nearly every case in describing these windows, you say "stained-glass pattern windows," "stained-glass figure windows," and stained-glass various other kinds of windows. Is that language which you have adopted the result of your conversation with Mr. Lamb and Mr. Simonson?

A. No, sir; it has always been used.

Q. You say "No," do you?

A. For four hundred years it has been used.

Q. You did not discuss that with Mr. Lamb or Mr. Simonson?

A. Very likely we did.

Q. And they suggested that you should say "stained-glass pattern windows," did they not?

A. I do not think they did.

Q. Yes or no?

A. I do not think they did.

Q. Do you know that they did not?

A. They talked so many things——

115 Q. Do you know that they did not?

A. No; I don't know nothing about it; we talked so many things.

Q. Mr. Simonson is your counsel, is he not?

A. Yes.

Q. You and the various other gentlemen in your trade are employing him, are you not?

A. Yes, sir.

Q. Do you know that he represented you or participated in the proceedings before the board of appraisers?

(Objected to as immaterial.)

A. Do you allude to the meeting that we had in Canal street?

Q. Yes.

A. He was present.

Q. And he acted there on your behalf, did he not?

A. Yes.

Q. Do you know that he filed a printed brief with that board?

(Same objection.)

A. I think he did.

Q. Have you seen it?

A. Yes.

Q. If that brief contains a statement that the phraseology of the present tariff was made at his suggestion or at your suggestion, or on your request or on his request, do you think his statement is true?

(Same objection.)

A. I think that whatever is in that brief we will have to acknowledge is true.

Q. You will admit it to be true?

A. Yes. If any other thing has cropped in there it is not noticed.

RICHARD LAMB sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

116 A. Church furnishing and decorating.

Q. For how long have you been engaged in that business?

A. For about 30 years.

Q. Are you familiar with all its branches?

A. With pretty much all its branches.

Q. Are you also a glass stainer?

A. Yes.

Q. And have been for how many years?

A. For 15 years.

Q. Are you acquainted with the mode of manufacture of stained and painted or painted glass windows?

A. Yes.

Q. Have you bought and sold stained glass windows?

A. Yes, sir.

Q. Are you familiar with the terms of the trade as known prior to October 1, 1890, in this country?

A. Yes.

Q. You have heard the merchandise of the importers here described. Are you familiar with such articles in your trade?

A. Yes.

Q. By what name were such articles known prior to October, 1890, by any specific trade name in trade and commerce in this country?

A. Yes.

Q. What was it?

By Mr. SMITH:

Q. You heard the testimony of Mr. Colegate to the effect that all these goods were manufactured on orders; that whoever wanted a window came to the manufacturer and ordered a particular window of a particular design or pattern?

A. I heard him make that remark?

Q. Do you endorse his testimony in that regard? Was his testimony true or not?

A. As far as he was concerned.

117 Q. No. I mean as far as the general business was concerned?

A. Possibly it was true as far as the general business was concerned.

Q. You say "possibly." Was it true or was it not?

A. That is a question that I can not answer.

Q. Do you know of anything in the general business contrary to what he testified to?

A. I do.

Q. What is it?

A. I have bought glass myself.

Q. You have bought glass? What do you mean by "buying glass"?

A. Stained glass windows.

Q. You have bought them?

A. I have bought them.

Q. Where?

A. In this market?

Q. From whom?

A. I can not remember the names exactly; but some glass was put on storage in 34th street, and had been there for a number of years, and was sold to pay the storage, and I bought it. That is one instance.

Q. Can you state any other?

A. Yes; some glass was on exhibition on Broadway and was advertised for sale, and I called to see it, and I bought it.

Q. Where? At what kind of a place?

A. In an art gallery between 13th and 14 streets, I think.

Q. What was it, a window?

A. Windows.

Q. It was painted glass?

A. It was painted or stained glass windows, figure work.

Q. And it was on exhibition in an art gallery on Broadway?

A. Yes.

Q. And you called at the art gallery and bought it?

118 A. I called at the gallery and bought it.

Q. Is there any other instance that you can mention?

A. Yes; I have one in our place that I imported.

Q. You bought it abroad?

A. Yes.

Q. Is there any other instance that you can give where you bought them in this country?

A. None that I remember at the moment.

Q. Now, outside of these two instances that you have given, is it or is it not true that if anybody wants a window he goes and orders a window of a man that is in the business of manufacturing such windows?

A. It is generally true that he does it in that way or through an agent.

Q. And by what class of people are these windows chiefly used?

A. By all classes of people.

Q. Are they chiefly used in churches, as Mr. Colegate testifies, or are they not?

A. You are referring now to church glass?

Q. I am referring to painted windows.

A. They are used in all places.

Q. In churches?

A. If you will go right down here to where we get a drink you will find a stained-glass window.

Q. A painted window?

A. A painted window.

Q. A figure window?

A. Yes.

Q. Where do you mean?

A. Right here on Broadway.

Q. When Mr. Colegate testified that these goods were ordered almost exclusively by churches——

A. He was doing an exclusively church business.

119 Q. So far as Mr. Colgate, in his testimony, undertook to speak for the general trade, when he said that these things were ordered almost exclusively by churches, your testimony is that his testimony was incorrect, is it?

A. My testimony would be that Mr. Colegate possibly answered from his standpoint and I am answering from mine, and possibly mine is more general than his.

Q. Do you think than two men from different standpoints and from contradictory standpoints can both speak for the same trade?

(Objected to as irrelevant and immaterial.)

A. Yes, very well, indeed. One might not be as extended as the other.

Q. Whether these things are ordered by churches or are ordered by other people in other lines of business or for other purposes, is it not generally true that they are manufactured on order?

A. On order.

Q. Does any man in this business keep a stock on hand from which purchasers can select?

A. Not that I know of.

Q. People who want them have them made to order?

A. As a rule.

Q. Then the term by which they are described *in* the term by which the manufacturer of them calls them or by which the consumer who wants them calls them?

A. Or anybody who is discussing that article. We do not know it in any other way.

Q. What do you mean by "anybody?"

A. I mean to say that if you come into my place and ask for a window I should want to know what kind of a window, whether a

120 plate-glass window or a stained-glass window.

Q. And if I asked for a stained-glass window you would know just what I wanted?

A. No; I should ask you what kind of a stained-glass window you wanted and how much money you wanted to spend for a stained-glass window; all those things would explain what you wanted.

Q. The term that was used to describe the article would be the term used by you as a manufacturer of the article and the term used by me as the buyer of the article?

A. That is the way that I understand it.

Q. And as you understand it, people do not usually buy these articles to sell again?

A. Not as a rule.

Q. They buy them to use?

A. They do it, but not as a rule.

Q. They buy them to use either in a house or a church?

A. Yes, or to give away.

Mr. SMITH. I object to the question addressed to the witness on the ground that it appears very clearly by his own testimony that there is no trade term which is applicable to these articles within the judicial decisions as to the meaning of the expression "trade term."

By Mr. PLATT. (Question read.) "What was it?"

A. Stained glass.

Q. I am referring now to the merchandise of the importers in this suit?

A. I do not know what that specific glass was.

Q. They were concededly windows. How were such windows described? You have heard them described by the witnesses who saw them?

121 Mr. SMITH. I object to any question which predicates as a fact that these windows have been described by a witness who saw them.

There is no such testimony in the case.

Q. I read from the findings of the appraisers as put in their opinion:

"The merchandise covered by the invoice in this case consists of pictorial paintings on glass, designed for use as interior windows for a church. The glass is in mosaic pieces of irregular shapes, colored by being "painted" or "stained" as these terms are used by glass-manufacturers, and fastened together so as to construct an ornamental window, such as is frequently devoted to memorial purposes in church edifices.

"Upon the glass are figures representing various biblical subjects and characters, including St. Mark the Evangelist, St. Peter, and many other pictorial representations of like kind, designed for religious instruction and edification.

"The merchandise was ordered specially for the "Convent of the Sacred Heart," at Philadelphia, and is designed for use solely by this religious society."

Q. Are you or were you acquainted prior to October 1, 1890, with merchandise of that character?

A. I was.

Q. By what name in trade and commerce prior to that time were such articles known?

(Objected to on the ground that no foundation has been laid for such a question.)

A. Stained glass.

122 Q. Are you acquainted with the process of the manufacture of articles such as these described here?

A. Yes.

Q. Will you describe the mode of manufacture of stained-glass windows such as are described here in the opinion of the general appraiser from which I have just read?

By Mr. SMITH:

Q. Have you ever seen windows of the character about which the counsel has questioned you made abroad?

A. I never have been abroad except when I was six months old.

Q. You have never been out of the country since?

A. I have never been out of the country since.

Mr. SMITH. I object to the question on the ground that any testimony as to how such articles might be manufactured in this country, within the knowledge of the witness, is entirely incompetent to show how they are manufactured abroad or how the goods which are the subject of this controversy, being imported goods, are manufactured.

By Mr. PLATT:

Q. (Read.) "Will you describe the mode of manufacture of stained-glass windows such as are described here in the opinion of the general appraisers from which I have just read?"

A. I can describe it as I understood it, but not as the counsel wants me to describe it, as I have not seen it abroad. In the first place there is for a stained-glass figure window a design, that I would submit to the client, and the client accepts it or not. If it is accepted, a cartoon is made from that design, which is a full-sized drawing of the window. The figure portion of the window is made by one man, the geometrical portion

123 by another, by cheaper labor. The cartoon is then arranged in such manner as to have a duplicate made, which is then cut into pieces. The glass is then selected from the colors and each color is cut to its proper size from a piece of paper which is the counterpart of a piece of glass. This is placed on an easel and copied from the cartoon. The colors are not put in the glass at all at that time. The ruby glass is ruby in the glass itself before it is cut; the blue is blue; the yellow is yellow, and so on through the whole list of colors. It is then, as you see here, leaded together, after having been burned in the kiln. That is a simple way of explaining it. If you want it more elaborate I will exemplify it as much as you want.

Q. What colors are used?

A. The colors are chiefly brown or black for the average part of the work and a yellow stain or a silver stain for the silver.

Q. What character of colors?

A. Mineral colors.

Q. How many different people work on the same glass window?

A. That is owing to the hurry that it is in; there is no limit really that can be put on a window. One man, the more expert, would take the flesh color, another man, less expert, would paint the drapery, and another less expert would paint in the leafage and the pattern and the ornament; and so you could have two or three working on one window if in a great hurry.

Q. Could you paint on such windows in oil?

A. We could not; not to have it durable; it would not last.

Q. Could you in water colors?

A. Nor in water colors.

124 Q. After these colors are put on I understand that they are burned on.

A. Yes; they are put into the fire and fluxed in the fire. That fuses the color and it becomes part and parcel of the glass.

Q. In relation to the change of colors—do the colors that go into the fire remain the same color when they come out?

A. They are fluxed then. In the case of silver stain, there is no color to it. For instance, here is the hair of St. John, here it is where it goes into the fire, and here it is as it is after it comes out. If you rub that you will find that it comes off.

Q. Does this illustrate the colors before firing?

A. That is the window before firing, and when fired it comes out like the other window. If you will turn that to the light you will see that I can wipe the stain off. The silver stain is held there simply by the earthy substance which remains on the glass. When that comes out of the fire it retains exactly the same color. By brushing that earthy substance away the silver color is given to the glass. That is why we are called glass-stainers.

Mr. SMITH. I would like it understood that this is all taken subject to my objection to the competency of the witness.

(The two specimen windows referred to by the witness are offered in evidence. The one before firing is marked Exhibit W. The same pattern after firing is marked Exhibit X.)

Q. Are those two samples identically the same pattern?

125 A. Identically the same pattern. If the one that is unburned was burned, I do not believe that you could then tell the difference between the two.

Q. How many different kinds of stained-glass windows were known and are known in your trade?

(Objected to as immaterial.)

A. Possibly half a dozen.

Q. Will you enumerate them?

A. Plain stained-glass windows; geometrical stained-glass windows; ornamental stained-glass windows; symbol stained-glass windows; figure stained-glass windows; jewelled stained-glass windows.

Q. In trade and commerce, I understand that these are all members of one form of stained-glass windows?

(Objected to as incompetent and immaterial.)

A. Yes; and we have manufactured all of them.

Q. For how long in this country have those articles been known in trade and commerce?

(Objected to as incompetent and immaterial.)

Q. Up to the last named (the jewelled stained-glass windows), possibly as long as I can remember and have known anything about the business—for 30 years. I have known them by those terms, with the exception of the jewelled, which is a new product.

Cross-examination by Mr. SMITH:

Q. Are the two exhibits—W and X—fair samples of the American art in this branch of trade?

A. Pretty fair; yes. They were done in a great hurry.

126 Q. They fairly represent the degree of excellence attained by American art?

A. Those are not here to represent the highest art.

Q. But they are fair specimens?

A. They are fair specimens of the thing done in a hurry. These were only done to show the modus operandi.

Q. What do you say about the colors that were used in preparing these articles, or in preparing any kind of figured windows?

A. That the blue is a blue in a glass, that the red is a red in the glass, that the yellow is a yellow in the glass, and so on right through the whole list, and that the colors were not put on and made, as a rule, by the painter. That is what I intended to convey.

Q. All these colors are used are they—the blue, yellow, red, black, brown, white, and so forth?

A. Pretty much all but the black. We do not use many figures in black. What I wanted to convey was, that the pieces of glass as cut up in mosaic form—the color is then in the glass, and it is not done as in enamel painting, where you take a large sheet or pane of white window glass and upon it paint a picture, and no matter how many colors there may be in that picture, each one is represented by the color of enamel, and then is placed in the fire, and it will leave a translucent enameled color. Those colors we do not use in stained glass. I refer to stained and leaded glass. We have to get our two colors together and hold them together by a piece of lead, as we see by this exhibit.

Q. You are referring to articles that you are familiar with in your line of business?

127 A. I am referring to articles that we are familiar with, for we do both kinds.

Q. What articles you are familiar with are made in this country?

A. No; I am also very familiar with foreign work.

Q. But you have never seen that made?

A. I never have seen it done on the other side; and I might say that outside of my own establishment I have never seen it done here, for we do not get into one another's shops as readily as you might suppose.

Q. You have never seen the windows that were imported by this particular entry and invoice?

A. I have not.

Q. But you say that these colors are all in the glass?

A. I should qualify that by saying that they are in or on the glass.

Q. They have been painted on the glass with pigments, have they not?

A. In the case of a piece of ruby that term might not be correct, because with a piece of ruby the color is really flashed on; that would be the proper term to apply to a piece of ruby; it would be a flashed ruby.

Q. I am not sure that I get your meaning. Let me show you this Exhibit W, and let me call your attention to the strands of hair that come down here. Do you mean to say that those are not painted on there with pigments?

A. I mean to say that they are painted there with a brush.
Q. How much of this Exhibit W is painted on with a brush?
A. The whole business.
Q. All this figure?
A. All of that whole figure.
128 Q. It is painted on with a brush?
A. Yes.
Q. On the glass?
A. Yes.
Q. And the glass, before that figure is painted on there with a brush, is stained glass?
A. It is stained glass.

By Mr. PLATT:

Q. What is it after the figure has been painted on and burned?
A. Then it is stained glass; very much stained glass.

By Mr. SMITH:

Q. Then it is stained glass with a figure painted on it?
A. It is stained glass burned.
Q. With a figure painted on it before it is burned?
A. It is stained glass.
Q. You said just now that there was a figure painted on it with a brush?
A. That is right.
Q. Is that painted on before it is burned or after?
A. Before it is burned.
Q. Then, before it is burned, before it goes into the kiln or furnace, it is stained glass with a figure on it?
A. Right.

By Mr. PLATT:

Q. Could it be used as a stained-glass window without being burned?
A. It could not.
Q. So that the process by which the figure is made durable on the glass is the burning process?
A. That is correct.
Q. The fusing process?
A. It goes through the kiln and then becomes part and parcel of the glass.
Q. You say that colored glass is stained glass. Here are some samples; that is green?
A. Yes.
Q. And that is what?
A. Ruby; and this is purple.
129 Q. Are those colors made in there when the glass is manufactured?
A. Yes; those were made when it was manufactured.
Q. Whereabouts in a stained-glass window—in what part, if—are those put in?
A. Very often we use the ruby in the drapery, green in the foliage, purple in the foreground, and yellow wherever you please.

Q. So that the colors there are in the glass without any other preparation?

A. They are in the glass without any aid of the artist or painter at all.

By Mr. SMITH:

Q. But the figure is painted on the glass with a brush?

A. No.

Q. What do you testify about that? I understand you to testify to that. If I am wrong, correct me.

A. You are wrong in the appliance of the term. You want me to say that a figure is the whole business, do you?

Q. I mean on that particular article, as to the eyes, hair, the nose, the mouth, and the features of the face?

A. They are painted right on there with a brush.

Q. They are painted with a brush on the stained glass?

A. You are right.

Q. And the leaves also are painted with a brush on stained glass?

A. Yes. The question, of course, as you want me to answer it, is a very difficult one to say, as to being painted. If you were to ask me to paint a leaf I should have to paint the green of the leaf, if it was a green leaf; but in this case the green is already there for you, and it is not a painted leaf in that sense of the word. I want you to understand
130 the difference between the painting of a leaf on glass and the painting of a green leaf on a plain white surface.

Q. Are not the leaves in Exhibit W painted on stained glass?

A. They are outlined on the glass and stained. The color is given to them by the stain.

Q. The color is given to them by a pigment?

A. It is given to them by the silver stain there. You will notice that that ground or field is not a green; it is a blue. Now, by putting a yellow with that blue you get a green tinge. The leaf that you see there was made in that way.

Q. With a brush?

A. Outlined with a brush, as you see it in this part. It is not a painted leaf in the sense you mean, or try to make me say. There is a leaf (referring to Exhibit X) painted out of a piece of light-blue glass. It is outlined on that. That is the ground color of the glass originally. To get this in here the color you now see it it is not painted. What is on there is held in a pigment. A rough substance, the silver stain, is put on there, and it is put on roughly, and could be put on by a boy or child ten years of age who could not paint anything.

Q. And so with those outlines?

A. I am talking now about what gives the color. This is what gives the coloring to the glass; it is the silver stain. The other outline is put on with a brush.

Q. Which outline?

A. The outline of the leaf against the blue ground is painted on with a brush, and the color is got by staining.

131 Q. How about the veins in the leaf?

A. The same way; painted with a brush.

Q. That blue ground before anything was put on, you say, was stained glass, do you not?

A. Stained glass.

By Mr. PLATT:

Q. As I understand your testimony, you make no distinction in your trade terms as to stained glass, whether it is a plain colored glass, a plain stained glass, or an ornamented glass, or a glass with figures on it?

A. Only as we term them.

Q. In your trade in this country prior to October 1, 1890, you say that all those different varieties were known as stained-glass windows?

A. Yes.

Mr. SMITH. This is all taken under my objection.

By Mr. SMITH:

Q. When you take a stained glass and paint on it with a brush the figures that are on such articles as Exhibits W and X, you call those articles figure windows?

A. We call them stained-glass windows.

Q. Do you not call them figure windows?

A. To designate them from what?

Q. To designate them from stained-glass windows?

A. Take me to a building and show me a window with a figure in it and ask me what it is—is that what you want me to answer?

Question. Answer that question.

A. Stained-glass windows.

Q. Is it not a figure window; is not that a particular variety of stained-glass window?

A. I will explain that in this way: I have been in a church. Suppose that I have just come from Mt. Margaret's Church. You ask me
132 what kind of glass they have there. I say "stained glass." Then you would ask me, "Do they have figured windows?" I would say, "Yes; those on the north side are figure windows. On the other side they are stained glass geometrical windows, and stained glass flower windows on another side."

By Mr. PLATT. Q. They designate different members of the same family?

A. Yes.

Mr. PLATT. I offer in evidence the advertisement of Meyer & Co., 124 W. 23rd street, on pages 128 and 129, from the official catalogue, directory and almanac of 1890.

Mr. SMITH. This is objected to on the ground that no foundation has been laid for the offer of these pages.

(Marked Exhibit Y for collector.)

Mr. PLATT. Also from the same book, I offer the advertisement of stained glass for churches, of F. Hucher, Camel du Mans, France, on page 125.

Mr. SMITH. That is objected upon the ground that the advertisement of a foreign house furnishes no enlightenment or evidence as to any commercial designation in this country, and is entirely immaterial for any purpose whatever.

(Marked Exhibit Z for collector.)

Mr. PLATT. I offer in evidence from page 151 of the Conference Report, the bill (H. R. 9416), from lines 14 to and inclusive of line 23, and also section 757 printed immediately below on the same page.

133 Mr. SMITH. I object to it as incompetent, immaterial, and irrelevant, and I offer in evidence from the same book, lines 12 to 18 inclusive on page 143.

Mr. PLATT. I offer in evidence the whole report of the Conference Committee.

Mr. SMITH. That is objected to as immaterial, irrelevant, and incompetent.

Mr. PLATT. I offer in evidence from the revision of the tariff, the hearing before the Committee on Ways and Means, of the Fifty-first Congress, first session, page 462, 463, and 464, under the subject "stained glass."

Mr. SMITH. That is objected to as immaterial and incompetent.

Mr. SMITH. I also want to have marked in evidence in this case the entry and invoice, and in offering the entry and invoice I offer each and every part of them, and everything affixed to them or contained in them.

(The entry is marked Exhibit 1, for importer; the invoice is marked Exhibit 2, for importer.)

It is conceded that the articles which were before the General Appraisers and which have been marked in red ink as Exhibits A, B, B, C, D, and H, are in evidence in this case.

134 At a stated term of the circuit court of the United States of America, for the southern district of New York, held at the United States circuit court rooms in the post-office building in the city of New York, on the 21st day of May, in the year of our Lord one thousand eight hundred and ninty-one. Present, the Hon. E. Henry Lacombe, circuit judge.

In the matter of the appeal of Perry & Ryer, from the decision of the Board of United States General Appraisers, as to the rate and amount of duty on certain paintings imported per S. S. Rugia, November 24, 1890. Suit No. 385.

The above cause coming on for hearing and determination before this court on the application of Perry & Ryer, importers, for a review of the questions of law and fact involved in the decisions of the Board of United States General Appraisers herein.

On the return of the Board of General Appraisers of the record and evidence taken by them with their certified statement of the facts involved therein, and their decision thereon, and on additional evidence taken on behalf of the collector before one of said general appraisers as an officer of this court.

Now, after hearing Henry C. Platt, esq., assistant United States attorney on behalf of the collector for affirmance, and W. Wickham Smith, esq., counsel for Perry & Ryer, importers, for reversal on motion of

135 Charles Curie, esq., attorney for petitioners,

It is ordered, adjudged, and decreed, that there was error in said proceedings before said Board of General Appraisers, and that the action

of the collector of the port in assessing upon said merchandise a duty of 45 per cent ad valorem was erroneous; that said merchandise was entitled to free entry; that the decision of the said Board of General Appraisers be, and the same is hereby reversed, and the collector of the port of New York is hereby ordered and required to reliquidate said entry by admitting said merchandise to free entry, and to refund the duty exacted by him upon said merchandise.

E. HENRY LACOMBE.

(Endorsed:) No. 385. United States circuit court, southern district of New York. In the matter of the appeal of Perry & Ryer, from a decision of the Board of General Appraisers on certain paintings, imported per S. S. Rugia, November 24, '91. Judgment of reversal. Charles Curie, attorney for petitioners, No. 44 Exchange Place, N. Y. City. U. S. circuit court. Filed May 22, 1891. John A. Shields, clerk.

136 United States circuit court, southern district of New York.

In the matter of the appeal of Perry & Ryer from the decision of the Board of United States General Appraisers, as to the rate and amount of duty on certain "paintings" imported per S. S. "Rugia," November 24, 1890. Suit "A," No. 385.

The undersigned, on behalf of the collecttor of the port of New York, and on the part of the United States, hereby appeals from the decision of this court, entered on May 21st, 1891, in the above entitled cause or proceeding, reversing the decision of the Board of U. S. General Appraisers, to the Supreme Court of the United States, and prays that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, May 22nd, 1891.

EDWD. MITCHELL,
U. S. District Attorney, for the Southern District of N. Y.

137 (Endorsed:) Suit "A," No. 385. U. S. circuit court, southern district of New York. In the matter of the appeal of Perry & Ryer from the decision of the Board of U. S. General Appraisers as to the rate and amount of duty on certain "paintings" imported per S. S. Rugia, November 24, 1890 -Notice of Appeal.—Edward Mitchell, U. S. Attorney.—Due service of the within notice of appeal is hereby admitted. Dated May 22, 1891. Chas. Curie, Atty., for petitioners.—U. S. circuit court. Filed May 25, 1891. John A. Shields, clerk.

138 United States circuit court, southern district of New York.

In the matter of the appeal of Perry & Ryer from the decision of the board of United States general appraisers as to the rate and amount of duty on certain "paintings" imported per S. S. "Rugia," November 24, 1890. Suit "A," No. 385.

To the circuit court of the United States for the southern district of New York.

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States Supreme Court from the decision and judgment of the U. S. circuit court rendered herein on the 21st day of May, 1891.

Dated May 22nd, 1891.

W. H. H. MILLER,
Attorney-General.
Per EDW'D MITCHELL,
U. S. Att'y.

The foregoing application is granted and appeal allowed.

Dated New York, May 22nd, 1891.

E. HENRY LACOMBE,
U. S. Circuit Judge.

139 (Endorsed): Suit "A," No. 385. U. S. circuit court, southern district of New York. In the matter of the appeal of Perry & Ryer from the decision of the Board of U. S. General Appraisers as to the rate and amount of duty on certain "paintings" imported per S. S. Rugia, November 24, 1890. Application for and allowance of appeal. Edward Mitchell, U. S. attorney. U. S. circuit court. Filed May 25, 1891. John A. Shields, clerk.

140 UNITED STATES OF AMERICA, *ss:*

To PERRY & RYER, *Importers:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 20th day of June, 1891, pursuant to an appeal on the part of the United States filed in the clerk's office of the circuit court of the United States, for the southern district of New York, to show cause, if any there be, why the decision of the U. S. circuit court, in the said appeal mentioned, should not be reversed, modified, or corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of New York, in the southern district of New York, on the 22d day of May, 1891.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) Suit "A," No. 385. U. S. circuit court, southern district of New York. In the matter of the appeal of Perry & Ryer from the decision of the Board of U. S. General Appraisers as to the rate and

amount of duty on certain "paintings" imported per S. S. Rugia, November 24, 1890. Citation. Edward Mitchell, U. S. attorney. Due service of the within citation is hereby admitted. Dated New York, May 22nd, 1891. Chas. Curie, attorney for importers. U. S. circuit court. Filed May 27, 1891. John A. Shields, clerk.

141 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 140, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the matter of the appeal of Perry & Ryer from the decision of the Board of United States General Appraisers as to the rate and amount of duty on certain paintings imported per S. S. Rugia, November 24, 1890, No. A 385, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the said United States the one hundred and fifteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsement on cover:) No. 1221. The United States, appellant, vs. Perry & Ryer. S. New York, C. C. U. S. Filed June 20, 1891. (14695). Supreme Court U. S., clerks office, received Jun. 20, 1891.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 794.

THE UNITED STATES, APPELLANT, vs. PERRY & RYER, RESPONDENTS.

STIPULATION.

Whereas in the above-named cause the names of the appellees are not given with sufficient precision to comply with the rule of this court:

It is therefore stipulated and agreed, by and between counsel representing all of the parties to said cause, that Edward W. Perry, John C. Ryer, Edward T. Coons, and Fred W. Estey constitute the firm of Perry & Ryer, the said appellees.

WM. A. MAURY,
Assistant Attorney-General, for Appellant.
W. WICKHAM SMITH,
For Appellees.

(Indorsed:) Case No. 14695, Supreme Court U. S., October term, 1892. Term No. 794. The United States, app't, vs. Perry & Ryer. Stipulation setting forth individual names of appellees. Filed Oct. 25, 1892.

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146 U.S. 71

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES
v.
PERRY & RYER. } No. 794.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

EXHIBITS REFERRED TO IN THE RECORD.

Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES, APPELLANT,
vs.
PERRY & RYER. } No. 794.

THE FOLLOWING ARE THE EXHIBITS REFERRED TO IN THE RECORD IN THE SAID CASE, IN SO FAR AS THE SAME CAN BE PRINTED.

EXHIBIT A.

[Photograph of a geometrical window.]

EXHIBIT B.

[Photograph of a figured window.]

EXHIBIT C.

[Photograph of the windows in question.]

EXHIBIT D.

[Figure of another painted window.]

8347——1

EXHIBIT E.

[Advertisement in official Catholic Directory Almanac for the year 1890.]

MAYER'S ROYAL ART ESTABLISHMENT—MUNICH STAINED GLASS—NEW YORK BRANCH—MAYER & CO., 124 WEST TWENTY-THIRD STREET.

[Picture of stained-glass window.]

We beg to call the attention of the reverend clergy to our stained-glass windows. For nearly 25 years we have been cultivating this branch of religious art, our purpose being to blend the old with the new, to restore and preserve all that was excellent in color, temper, and durability in the grand old windows of mediæval times, while improving on it by adding the life, naturalism, and beautiful drawing of the modern Munich school. We beg to enumerate a few of the churches abroad as well as in this country where our work can be seen, and also join a few testimonials from various authoritative sources:

Vatican, St. Canisius, Rome; cathedrals of Vienna, Olmütz, Cologne, Constance, Metz, Burgos, Malaga, Dublin, Limerick, Monaghan.

Chapel of Maria Einsiedeln, Einsiedeln, Switzerland.

Cathedral, Philadelphia; New Cathedral, San Francisco; Church of the Assumption, Cincinnati, Ohio; St. Mary's, Syracuse, N. Y.; St. Gregory's, Baltimore, Md.; St. Mary's, Morristown, N. J.; St. Michael's, Pittsburgh; Academy of the Sacred Heart, St. Louis, Mo.; Chapel of the Sisters of Providence, St. Mary's, Ind.; St. Elizabeth's Church, Philadelphia.

New York churches: St. John's, E. 55th st.; St. Paul the Apostle, W. 59th st.; St. Mary's, Grand st.; St. Stephen's, E. 28th st.; St. Gabriel's, E. 37th st.; Church of the Assumption, W. 49th st.; Convent Sacred Heart, Manhattanville; St. Charles Borromeo, W. 141st st.; Church Holy Cross, W. 42d st.; St. Agnes, Brooklyn.

TESTIMONIALS.

GENTLEMEN: It gives us great pleasure to express our fullest satisfaction and appreciation with the stained-glass windows which you have just placed in the chapel of our convent. We admit that the task which you accomplished was not a small one, considering that there were 83 windows to be filled, containing over 7,000 square feet. Much more difficult was it to solve the artistic and æsthetic problem, to execute windows in a church built in the richest Barocco, with figural and ornamental decorations in rich colors, without marring in the least the complete harmonious impression, and especially without interfering with the light of the church to which we are accustomed. The problem was ably solved. The composition, drawing of the figures and ornamental parts, the

correct treatment of that peculiar style, the coloring and technicalities are equally successful and praiseworthy. You have proved that your establishment is thoroughly efficient in the treatment, not only of windows in the Gothic and Romanesque, but also of the Renaissance, Barocco, and Rococo style. We can only wish that you may be equally fortunate in solving similar problems with the same brilliant success in other churches.

Yours respectfully,

BASILIUS, *Abbot.*

BENEDICTINE MONASTERY,
Einsiedeln, Switzerland, November 1st, 1888.

COLLEGIO GERMANICUM,
Via S. Nicola da Tolentino 8, Rome, October 1st, 1888.

GENTLEMEN: The stained glass windows executed for St. Canisius Church of the Collegio Germanicum having now been placed in position, I can not but tender you my sincerest congratulations on the magnificent work produced by your establishment. The artist, having combined correct, beautiful drawing and representation with the requirements and severity of the Romanesque style, has thus thoroughly carried out my intentions. The ornamental parts and the figured representations are combined through the deep, brilliant coloring, producing a splendid effect. In my opinion the large three-light window in the transept, representing "Christ sending His Apostles into the World," might claim the first prize. What I would like to mention particularly is that even the small heads—as, for instance, the one of St. Boniface—show excellently their beautiful and noble conception.

Repeating my congratulations, I wish to express my gratitude, and remain, gentlemen,

Your obedient servant in Christ,

FRIEDRICH SCHROEDER, S. J., *Rector.*

ST. JOSEPH'S CHURCH,
Paterson, N. J., Nov. 30th, 1888.

MESSRS. MAYER & CO., *New York:*

GENTLEMEN: I enclose check for the balance due on our stained-glass sanctuary windows. I take great pleasure in saying that I am very much satisfied with the windows. They are unsurpassed in beauty and design, in the harmonious blending of colors, and in the artistic execution of the figures. The center window, containing the group of the Nativity, is admired by everybody. The figures of the other windows are equally perfect.

Very truly, yours,

S. B. SMITH.

50 RATHGAR ROAD,
Dublin, April 12th, 1888.

GENTLEMEN: I have great pleasure in bearing testimony to the character of the work in stained glass, etc., which you have executed for me in my church, and which I know forms a leading

and most artistic decoration for many of the leading churches of this diocese. I have no doubt that your patrons in America will soon learn to prize any work you may be invited to execute for them, and may rest satisfied that true ecclesiastical taste and rubrical exactness will find all interpreters in the skilled and clever artists that superintend your various departments. Wishing you every success in your new enterprise, I remain,

Faithfully, yours,

†N. DONNELLY, *Bishop of Canea.*

NOVEMBER 11TH, 1889.

MESSRS. MAYER & CO.:

GENTLEMEN: It gives me great pleasure to add my word of commendation to the wealth of praise that has been bestowed on your work of stained-glass art.

The windows in the Church of St. John the Evangelist have been universally admired, and all that have seen them agree that the work could not be excelled.

I did not decide on the selection of these windows until I had carefully examined the work of all the other prominent houses and concluded that yours was unmistakably the best. This confidence in your ability and experience was not misplaced, and now, after two years, I find the beauty of the work growing on me day by day, which could only be in the case of true art. Wishing you every success, I remain,

Yours, very respectfully,

J. J. FLOOD,
Pastor, St. John the Evangelist, N. Y.

EXHIBIT K.

TRADE CIRCULAR OF MAYER & CO.

In submitting this catalogue to your kind attention we would respectfully have it borne in mind that it is almost impossible to compile a collection of designs for stained-glass windows so complete as to be of material help in the selection of subjects. This may readily be understood when it is considered what a wide field the Holy Bible alone offers, not to mention the immense number of designs that may be depicted from the history of the saints.

In presenting therefore these few sketches our chief object is to bring our establishment to your notice and at the same time to state that we shall be happy to forward a collection of colored designs or to make special ones entirely free of charge; and in order to materially assist our selection of sketches we beg that when possible a rough outline of the shape and size of the proposed window, and any ideas that may have been formed as to subject, may be sent to us.

We venture to say that having been established in Munich for nearly fifty years with a branch in London since twenty years, where especially the requirements of stained glass are so well known and appreciated, we can by combining the acknowledged superiority of the art of drawing and painting obtainable in Munich with the truer technicality of English manufacture, successfully compete with any establishment in Europe in point of artistic beauty and excellency of materials. At the same time, as our house is on a very extensive scale, employing three hundred artists and workmen, and Munich being a less expensive city of art than any other, we are able to execute windows at less cost than equally good works can be obtained elsewhere.

On receiving some indications of sizes, etc., we shall submit estimates, but in order to give some idea of cost we beg to state that windows containing figures or groups vary from $5 to $10 the square foot, and those without figures (richest Grisailles and carpet patterns) from $2 to $3 inclusive of packing and freight to New York, duty free.

We need hardly add that all our windows of which specimens may be seen in almost every town of England and Germany are made of the best pot-metal glass, and in richness and harmony of color are almost equal to those so deservedly admired in the old cathedrals and churches of the Middle Ages.

MAYER & CO.

EXHIBIT L.

ADVERTISEMENT OF MAYER & CO., IN CATALOGUE OF ARCHITECTURAL LEAGUE EXHIBITION IN NEW YORK, DECEMBER, 1891.

[Mayer's Royal Bavarian Art Establishment. Munich, London, New York. Stained-Glass Windows.]

[Picture.]

The recognized feature of our stained glass is that we combine the acknowledged superiority of the Munich school of drawing with the beautiful and brilliant coloring found in stained-glass windows of the earlier centuries. In bringing together what is excellent in the works of former ages (brilliancy of color effect) with the advantages of our own time (correct modern drawing) we are enabled to produce windows which are beautiful and edifying to the beholder, and which give the rich glow to the interior of the church so greatly admired in windows of the Middle Ages.

New York Branch:

MAYER & CO., *124 West 23d street.*

EXHIBIT M.

[Alfred Godwin, designer and manufacturer of stained glass, 1201 Market street, Philadelphia, Pa.]

Here follows a large number of highly illuminated examples of stained-glass windows for churches and domestic purposes, being geometrical, figured, and pictorial.

EXHIBIT N.

[Illustrated catalogue free. Stained glass. Alfred Goodwin, 1201 Market street, Philadelphia.]

Here follows a number of illustrations of geometrical, ornamental, figured, and pictorial stained-glass windows.

EXHIBIT O.

[Illustrated catalogue and price list of designs for stained-glass windows for all grades of ornamentation, by the Bray & Breck Stained-Glass Works, 35 and 37 Province street, Boston, Mass.]

Here follows a number of designs, geometrical, ornamental, and figured stained-glass windows.

EXHIBIT P.

Cox & Son's illustrated catalogue of monuments, tombs, tomb rails, mural tablets, monumental brasses, headstones, and memorial windows.

Showrooms, 28 and 29 Southampton street, Strand, London.

Manufactory:

The wood and stone carving, Gothic metal, and monumental works, College Wharf, Belvedere Road, Lambeth.

Painted and stained glass works, 43 and 44 Maiden Lane (adjoining Southampton street).

(All communications are requested to be made to Southampton street.)

STAINED-GLASS MEMORIAL WINDOWS.

Messrs. Cox & Son desire to direct particular attention to memorial windows, which, besides their monumental use, serve also to adorn the churches in which they are erected.

Inscriptions can either be placed on the glass or engraved on a brass plate, placed below the window.

The stained-glass department is one to which Messrs. Cox & Sons have devoted considerable attention, and it is their endeavor, by treating all the windows entrusted to them on true art principles, and in the representation of natural objects, to avoid, on the one hand, grotesqueness and inaccurate drawing, and on the other hand to abstain from that pictorial treatment which makes the window look like an illuminated transparency. By strict attention to design and careful drawing the figures and drapery may be rendered true to nature without disregarding the treatment which architectural principles and usage require. The cartoons of subject windows are prepared by an artist who has devoted his life to the study of this branch of art, and has spent many years on the continent studying the celebrated works of the old masters.

In the portion of the catalogue devoted to stained glass will be found illustrations of a few of the windows recently executed, but it may be observed that the effect of stained glass can be only very imperfectly indicated in wood engravings. It has been found almost impracticable to state prices, as the cost of stained glass varies according to the size and forms of the windows and the elaborateness of the painting. Some few general particulars may, however, be useful. The quarry patterns are very inexpensive, and will be found in many cases a satisfactory means of adorning the windows of churches on correct principles at little cost, as will be seen by the prices referred to in the catalogue. The gresaille and geometric patterns are far superior in effect to the quarry windows, and are suitable for small windows, and are also comparatively inexpensive. For the higher class of subject windows, designs and estimates will be furnished as required, and from the economy of the process adopted by Messrs. Cox & Sons, they are prepared to undertake these works at as low a rate as is compatible with preserving richness of color, good design, and durability of workmanship. Each portion of this beautiful work is executed by Messrs. Cox & Son at their own workshops, from the designing and painting the glass to the firing in the kilns. For the latter purpose new kilns of improved construction have been recently erected, in which every piece of glass is thoroughly vitrified without injury to the brilliancy of the color.

Engravings of a few windows recently executed and further particulars are given on pages 19 to 22.

Here follows a number of illustrations of ornamental and pictorial stained-glass windows.

EXHIBIT Q.

[The Architect, July 12, 1889.]

An elaborate design for stained-glass windows.
Design for stained glass for the apse windows of the Convent of Notre Dame, Birkdale, Lancashire, by Christopher W. Whall.
Christ Among the Doctors. From a sketch by Edmund Kirby, Friba.

EXHIBIT R.

[The Architect, July 12, 1889.]

An elaborate design for stained-glass windows.
Design for stained glass for the apse windows of the Convent of Notre Dame, Birkdale, Lancashire, by Christopher W. Whall.
The Holy Family. From a sketch by Edmund Kirby, Friba.

EXHIBIT S.

[The Builder, September 7, 1889.]

An elaborate design for stained-glass windows.
Stained-glass windows, New Jerusalem Church, Kensington.
Designed by Mr. James F. P. Camm; executed by Messrs. Winfields.

EXHIBIT T.

[The Builder, November 3, 1888.]

An elaborate design for stained-glass windows.
Design for stained glass, Aldington Church, Kent, by Messrs. Shrigley & Hunt.

EXHIBIT U.

[The British Architect. September 30, 1887. (Copyright.)]

Six antique designs for stained-glass windows.
Old stained glass, in Lond Melford Church. Drawn by E. L. Conder.

EXHIBIT V.

Cox & Sons, illustrated catalogue of designs for stained-glass windows for churches and domestic use.

The process of preparing a stained-glass window.

Here follows a description of process.

THE PROCESS OF PREPARING A STAINED-GLASS WINDOW.

The first step after the design has been selected is to make a full-sized drawing of the window, which represents the exact dimensions of the various parts. Great care must be taken to introduce the lead in positions where its appearance will heighten the effect of the glass by forming bold outlines, such as those which separate the figures from the background, and give a depth of shade in the folds of the drapery. If this idea is kept in mind, the leaden bands will give increased effect to the window; whereas in windows where this is not made a study the effect of the glass is much marred by their prominent appearance.

After the first drawing has been prepared, a second one is traced from it, called a "cutting drawing;" this merely shows the shape and size of each piece of glass to be used. The artist then marks upon this drawing the colours and tints of glass to be selected; this is a process requiring great nicety and judgment. Good windows are often completely spoiled by want of knowledge of harmony and colour on the part of the person who decides upon the shades to be employed; in fact, the general effect of a window badly drawn and well coloured would be far better than that painted from the most perfect cartoon if ill colored. The glass-cutter next receives the drawing, and from the sheets of various coloured glass chooses the tints marked out, and with a diamond cuts the pieces to the required shapes. Those who have never seen the process of manufacture have little idea of the great number of pieces of glass used to produce a stained-glass window; in fact, the process is in many respects analogous to that of mosaic works, except that the various pieces of glass are joined by leaden bands instead of cement.

The next process is the painting of lines and shading, for which purpose the various pieces are temporarily fixed upon a glass easel, when these are laid on with a brush in the pigment used for that purpose, and the parts which are wished to be stained yellow are covered with the preparation of silver, which, when fired, produces that effect. After this is done, all the pieces of glass are removed to the kilns, where they are placed tier above tier on iron shelves, and then exposed to a heat so powerful that the surface of the glass is fused, and the outlines and shading become vitrified and incorporated with it. Considerable experience is required to stop the "firing" at the right moment, as if this is not done, or if there are any defects in the construction of the kiln, the brilliancy of the glass is materially injured. There is also

some risk of the glass cracking if care is not taken to allow it to cool very gradually.

After the first firing many parts require further painting, which being done, they then receive the final firing, and all is ready for the glazier.

The "cutting" drawing before mentioned is now placed on a large board or table, and the various pieces of glass laid upon it in their proper position. The leading up of the window is then commenced. For this purpose leaden bands are used, having a groove on each side. The bands are bent and soldered together in the form indicated by the "cutting drawing," and unite all the various parts into a complete window.

By permission of Messrs. Pilgrim & Lefèuvre, publishers of the engraving of Holman Hunt's "Light of the World," Messrs. Cox & Sons are enabled to supply this subject in stained glass. The large window illustrating this subject fixed in St. Luke's Church, Philadelphia, in January, 1876, is their work. The price of such a window, very highly worked up, is £5 per square foot.

In order to give an idea of the arrangement of the colours in the designs contained in Messrs. Cox & Sons' catalogue of stained glass, a few copies have been coloured by hand and bound, and although, of course, they can not show the richness of the glass itself, they will be found useful. One of these can be sent for inspection if wished; but, as it is valuable, it must be understood that they are to be returned in a few days; and if not returned, a charge will have to be made. Messrs. Cox & Sons have also a number of photographs of the cartoons of their windows, and will gladly send a selection. These will especially show the excellence of the drawings from which the figure subjects are worked.

London: Cox & Sons, 28, 29, and 31 Southampton street, Strand, 1876.

EXHIBITS W AND X.

[Samples of glass before and after burning.]

EXHIBIT Y.

[Advertisement of Mayer & Co. in the Catholic Directory for 1892.]

[Not deemed necessary to print any more advertisements of Mayer & Co.]

EXHIBIT Z.

[Advertisement of F. Hircher.]

[Omitted as unnecessary.]

EXHIBIT, CONFERENCE REPORT.

Page 157, conference report upon the bill (H. R. 9416) from line 14 to and inclusive line 23; also paragraph 757, printed underneath:

757. Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictoral paintings on glass, (395) *or painted glass windows, when pictorial,* imported expressly for presentation to a national institution, or to any State or municipal corporation, or incorporated religious society, college, or other public institution, except (396) *only* stained or painted window glass or (397) *ordinary* stained or painted glass windows; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

757. Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictoral paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation, or incorporated religious society, college, or other public institution, except stained or painted window glass or stained or painted glass windows; but such exemptions shall be subject to such regulations as the Secretary of the Treasury may prescribe.

STAINED GLASS.

STATEMENT OF S. M. ADAMS.

Mr. S. M. Adams, of No. 658 Broadway, New York, next addressed the committee. He said:

Mr. Chairman and gentlemen of the committee, I appear on behalf of the glass-setters of the United States, the men who furnish the stained-glass windows for churches and public buildings. The difficulty with us is that the decision of the Attorney-General, concurred in by the Treasury Department, has set aside the duty of 45 per cent, as originally placed upon stained-glass windows imported into the country. The result of that decision has been to wipe out our business. Nineteen-twentieths of the stained-glass windows used in churches are imported, and without paying 1 cent of duty. The decision of the Attorney-General, as set forth by the Attorney-General, calls them works of art. They are no more works of art than a handsome carpet. They are simply pieces of colored glass fastened together. They are not works of art in any sense. The Attorney-General has decided that they are works of art, and they have been imported absolutely free of duty. The duty is 10 per cent on works of art that are not presents to religious or educational institutions, yet by taking subscriptions among members of the church and divid-

ing it up, say $500 for this window and $500 for that, it would be a present by this, that, and the other, and the consequence is the windows come in duty free.

The CHAIRMAN. Is that practically true of all importations of stained glass?

Mr. ADAMS. In regard to the importation of stained-glass windows this is absolutely true. Now, we wish the law so fixed that a duty can be collected without the interference of any attorney-general, or anybody else. The only way we can see to do that is to say that no window costing less than $5,000 shall be considered a work of art.

The CHAIRMAN. Have you a printed memorial there; do you make an explanation of just what you want?

Mr. ADAMS. No, sir; in the printed memorial we have not made the statement that any window shall not be admitted valued at less than $5,000; but that is the only way I see out of it. The law was straight enough at 45 per cent, but the decision of the Attorney-General did away with that, and under that decision the importers have their agencies in New York—seventeen or eighteen of them—and they get nineteen-twentieths of the work done in the United States. It is a beautiful art, and we think we should do all this work here.

Mr. BURROWS. When was that decision made?

Mr. ADAMS. It was made in regard to a church in New York. Roscoe Conkling was the man who carried it through.

Mr. BURROWS. I speak of the decision of the Attorney-General.

Mr. ADAMS. It was in Mr. Conkling's time. He acted for the church and got the decision.

The CHAIRMAN. He represented the church before the Attorney-General?

Mr. ADAMS. Yes, sir; and since then the foreign importers have been increasing their business and decreasing ours.

MEMORIAL FROM GLASS-STAINERS.

The Committee on Ways and Means, House of Representatives:

The glass-stainers of the United States respectfully ask your consideration to the great injustice that is done to our business by the present tariff law.

Painted or stained glass windows are admitted free of duty if for presentation to a religious corporation, etc., providing such windows attain to the rank of a work of art.

All windows with figures or pictures represented on them, without any regard to their being the work of an artist, are classed as works of art by the appraisers and admitted free of duty. The windows are sold for $1.50 to $6 per square foot.

On raw material, colored glass, we pay a duty of 30 to 60 per cent; enamel colors 35 per cent, and also a duty on lead and iron, which is largely used in the work.

Labor in Europe is $1.25 against $3 per day here. Eight-tenths

of the cost of this work is for labor, while the manufactured article is free of duty.

Stained glass we claim is an industrial and decorative work, an article of use and a manufacture, made by contract with the most favorable bidder.

We ask that the duty of 45 per cent be placed upon all stained-glass windows, to enable us to compete with the foreign manufacture. Eighteen-twentieths of the work is now taken to Europe to be done.

WM. GIBSON'S SONS,
142 East Thirty-third street, New York,
J. R. LAMB,
59 Carmine street, New York,
T. & JNO. MORGAN,
53 Bleecker street, New York,
Committee.
JOHN MORGAN,
53 Bleecker street, New York,
Secretary.

VIEWS OF WM. COULTER & SON.

CINCINNATI, *February 4, 1890.*

DEAR SIR: We inclose to you a petition from the firms in our business in this city. The petition explains itself and you can at a glance recognize the justice of what is asked.

The stained-glass industry is a rapidly increasing one in this country. It is absolutely necessary that a duty should be imposed upon the imported work. We have establishments in this country now that far excel anything in Europe, and must necessarily have the protection desired or be eventually crushed out. They can only turn out this most artistic class of work as a result of highest priced and skilled mechanics. As the world knows the relative scale of wages in the foreign countries and ours, hence the necessity of the protection asked.

We most earnestly ask that you give this matter some of your very valuable time and therefore place the petitioners under great obligation to you, and especially so.

Yours, most respectfully,

WM. COULTER & SON.

Hon. WM. MCKINLEY,
House of Representatives.

MEMORIAL FROM CINCINNATI.

To Hons. Benj. Butterworth and Jno. A. Caldwell, Representatives for First and Second Congressional districts of Ohio:

We, the undersigned, your constituents, respectfully urge upon you the necessity of protecting our industry in the present revision of the tariff laws.

In order to protect our industry, Congress imposed a tariff of 45 per cent ad valorem on all painted and stained glass imported to this country (United States tariff laws, paragraphs 549–557).

This provision has been rendered absolutely nugatory by the decision of the Attorney-General (United States Treasury, decision No. 3142), who has decided that painted and stained-glass windows may be ranked as works of art, and when entered for presentation to religious corporations, etc., should be admitted free.

Under this decision our appraisers class all windows with representations of figures or pictures on them as works of arts, without any regard to merit. This work is sold at $1.50 to $6 per square foot.

The relief we desire is that stained-glass windows should be classed as belonging to the decorative or industrial arts, and as articles of use, being a substitute only for the plainer window, and not as works of art.

If so classed and forever exempted from the free list, and the present tariff of 45 per cent ad valorem continued, our industry will flourish and give employment to hundreds of designers, glass painters, and lead workers.

Should this relief not be granted the future of our industry is at an end.

We can not compete with foreign work for the following reasons:

Wages in Europe, one-half what is paid in this country. Wages form eight-tenths of the cost of the work. We pay a duty on raw material and antique glass, 30 to 60 per cent. On enameled colors 35 per cent, and on lead, which enter largely in the manufacture of a window, a duty is also paid. With all these disadvantages against us, the finished article is allowed to come in free.

From the glass stainers of Cincinnati, Ohio.

WM. COULTER & SON,
Employing twenty men.
VOLLMER, TOMOOR & MARX,
Employing twenty-four men.
THE BOWEN ART STAINED GLASS WORKS,
Employing thirty men.
THE ARTISTIC GLASS PAINTING COMPANY,
Employing twenty-five men.

EXHIBITS NOS. 1 AND 2.

OFFICE OF THE COLLECTOR OF CUSTOMS,
New York City, September 30, 1892.

I, Dudley F. Phelps, deputy collector of customs at New York, do hereby certify that I have compared the annexed copies of entry, invoice, bill of lading, declaration, consul's certificate, oath

of importer, etc., pertaining to the entry No. 191589, Perry & Ryer, per *Rugia*, November 22, 1890, with the originals on file in the office aforesaid, and find and do certify that they are in all respects true copies of such originals.

Witness my hand and the seal of the said office this 30th day of September, A. D., 1892.

DUDLEY F. PHELPS,
Deputy Collector.

191589.

[Duplicate.]

I, Frederick W. Catlin, consul of the United States at Munich, do hereby certify that at this consulate on this 22nd day of October, A. D. 1890, the within invoice, No. 809, in which are mentioned and described certain paintings on glass, amounting, with the charges thereon, to the total sum of M. 2,149.35, was produced to me by Adolf Rau, in person, who thereupon declared in writing in my presence that entry of said merchandise was to be made at the port of New York, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the price stated in said invoice represents the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice, or respecting which I shall make special communication to proper authority.

Witness my hand and seal of office at Munich, the day and year aforesaid.

(Signed)
[SEAL.]

F. W. CATLIN,
Consul of the United States of America.

Invoice No. 809.

MUNICH, GERMANY.

Shipper [Ubfender]: Mayer & Co., Munich.
Consignee [Empfänger]: Convent of the Sacred Heart, Philadelphia.
Contents [Inhalt]: Works of art, paintings on glass.
Quantity [Unzahl der lolli]: 3 cases.
Value [Betrag]: M. 2,149.35.
Mark [Zeichen]: Mayer & Co., No. 1314—1-3.
Port of shipment [Berfchiffung-hafen]: Hamburg.
Port of entry [Einfuhr-hafen]: New York.
In bond to [ ]: ——
Destination [Beftmmung]: Philadelphia.
Fee of $2.50 received.

[Form No. 138. 3406 A.]

[Declaration to be indorsed on the invoice and signed by the purchaser or duly authorized agent of such purchaser where merchandise has been actually purchased.]

CONSULATE OF THE UNITED STATES OF AMERICA,
At MUNICH, GERMANY.

[Uebersetzung.]

I, Adolf Rau, of Munich, do solemnly and truly declare that I am the agent of the owner of the merchandise in the within invoice mentioned and described; that the invoice is in all respects correct and true, and was made at Munich, whence said merchandise is to be exported to the United States; that said invoice contains a true and full statement of the time when, the place where, and the person from whom the same was purchased, and the actual cost thereof, and all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice, but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to anyone, and that the currency in which said invoice is made out is that which was actually paid for said merchandise. And I further declare that it is intended to make entry of said merchandise at the port of New York, in the United States of America.

Dated at Munich this 21st day of October, 1890.

(Signed) ADOLF RAU.

191589.

[Rechnung der Mayerschen kgl. Hof-Kunstanstalt für kirchliche Arbeiten.]

MUNCHEN *am 21 Oktober, 1890.*

Glasmalerei, Altarbau, Statuen in Holz. Stein und Steinmasse.

Perry & Ryer.

Shipped via Hamburg through Messrs. Louis Delius & Co. to Messrs. Perry & Ryer, 65 Beaver Str., New York, Mayer & Co., No 1314, 1–3, 3 cases containing works of art, paintings on glass, representing—	
St. Agnes, St. Joseph teaching our Lord, St. Philomena, St. Anne, the Bl. Virgin, St. Mark Evangelist, St. Peter dictating the Gospel to St. Mark, St. Helena and the storm in the Adriatic, St. Thomas Aquinus, St. John leaning on the heart of our Lord, St. Catharine of Alexandria, and St. Alexander ordaining St. Athanasius, transport.	$500
	$500

(Across the face:) Assess duty Dr. 11/ 90. (By order.)

The articles covered by this invoice attain to the rank of a work of art.

Dec. 5/90. J. N. C.
C. A. STEVENS.

Importers claim that the mdse. covered by this invoice are *paintings on glass—attaining to the rank of works of art.* The appraiser will please report.

Dec. 5/90. C. J. J.

The merchandise covered by this invoice are paintings on glass attaining to the rank of works of art.

Dec. 8/90. J. N. C.
C. A. STEVENS.

I, Adolf Rau, of the city of Munich, being duly sworn, deposes and says that he is by profession and practice an artist; that the articles mentioned and described in the invoice annexed were made and executed by him or under his professional direction; and that the said invoice embraces and includes only such works of art as are the actual professional production of an artist and are no articles of manufacture.

ADOLF RAU.

Sworn to before me this 22d day of October, 1890.

[L. S.] F. W. CATLIN,
U. S. Consul.

Fee No 425—M, $2.50

I, F. W. Catlin, consul of the United States at Munich, do hereby certify that I am satisfied that the person Adolf Rau, making the affidavit or declaration hereto annexed, is a professional artist and that the works of art mentioned and described in the annexed invoice were executed and made by him or under his professional direction and supervision and are not articles of manufacture.

Witness my hand and seal of office at Munich this 22d day of October, 1890.

[L. S.] F. W. CATLIN,
U. S. Consul.

Fee No. 426—M, $2.50.

191589.

[Stained glass and objects of ecclesiastical art. Louis Trueg, manager of New York branch.]

[Memorandum from Mayer & Co., of Munich and London, 124 W. 23rd street, New York.]

ROYAL BAVARIAN ESTABLISHMENT, *Nov. 22, 1890.*

MESSRS. PERRY & RYER,
65 Beaver str., New York City:

DEAR SIRS: I notice that the paintings for the Academy of Sacred Heart, Philadelphia, are invoiced for $500, whereas I sold them for $900. I presume this is a clerical error made in Munich. Kindly alter the invoice to agree with the sale. Although these paintings are free I am no doubt obliged to declare them on the invoice at selling price.

Yours, very truly,

LOUIS TRUEG,
Manager Mayer & Co.

Add to make market value, $400. M, 1680.

191589.

Oath of importer on free entry of articles intended for use of colleges, schools, etc.

I, John C. Ryer, of the firm of Perry & Ryer, of N. Y., State of N. Y., do solemnly swear that the articles mentioned in the above affidavit were specially ordered for, and are to be delivered to Convent of Sacred Heart, and that they were imported by Perry & Ryer in the SS. Rugia, from Hmb'g, arrived Nov. 22, '90, consular invoice dated Munich, Oct. 21, '90, cases Mayer & Co., 1314 1–3, 3 cases.

JOHN C. RYER.

Sworn to before me this 24th day of November, 1890.

N. W. E. STROESEL,
Deputy Collector.

191589.

[N. Y. Cat. No. 512¾.]

Oath preliminary to free entry of articles intended for use of colleges, schools, etc.

I, S. T. Randall, R. S. C., do solemnly swear that I am superior of the Convent of the Sacred Heart, located at Philadelphia, in the State of Pennsylvania, and the following articles, viz: Mayer &

Co., No. 1314, 1–3=3 cases paintings were ordered by me May 12, 1890, to be imported by Perry & Ryer for the sole use of the said Convent of the Sacred Heart as its permanent property, and not for sale or distribution.

And I do further swear that none of the articles above mentioned have been furnished the said convent by the said Perry & Ryer in anticipation of or in exchange for similar articles to be imported, nor will I receive any article from the stock on hand, or otherwise, of the said Perry & Ryer in exchange for, or in lieu of, the articles above mentioned.

S. T. RANDALL.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Personally appeared before me the said S. T. Randall, known to me to be the identical person named in the foregoing affidavit, and subscribed and made oath thereto.

Witness my hand and official seal this 8th day of November, 1890.

[L. S.] EDW'D L. BUCHEY,
Notary Public.

191589.

[Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft. Offices in New York, No. 37 Broadway.]

Shipped, in good order and condition, from Louis Deluis & Co., by steamship *Rugia*, it being understood that goods received on the ships, wharves, or lighters, are to be considered as shipped, ship's liability being the same as if on board, bound for New York, with liberty to call at Havre or any other port or ports, Mayer & Co., 4608, or 46081, 1 case stone massgoods, Gr. 102 Ko.

Mayer & Co. { 1314/1 and 2 cases works of art paintings on glass, 176,
1314/3 1 case iron, 74,

being marked and numbered, as per margin (weight, measure, quality, contents, and value, although mentioned in the bill of lading, to be considered as unknown to the master, unless expressly recognized and agreed to the contrary), and to be delivered in like good order and condition at Hoboken, Brooklyn, or at any other place within the jurisdiction of the custom-house of the aforesaid port of New York, unto Messrs. Perry & Ryer, or to his or their assigns, freight on the goods to be paid at Hamburg, and charges as per margin. General average payable according to York and Antwerp rules, 1890.

It is mutually agreed as follows: [Terms of the bill of lading, which are omitted.]

Dated in Hamburg the 31st day of October, 1890.

Import entry. 191589.

[Perry & Ryer, custom-house brokers, 65 Beaver street and 20 Exchange Place, New York.]

Entry of merchandise imported by Perry & Ryer in the *Rugia*, whereof ——— is master, from Hamb'g, New York, Nov. 24, 1890.

Marks.	Nos.	Packages and contents. Specifications as per accompanying invoices.		Free on oath and appr's. rpt.			
Mayer & Co.	1314½	Three cases paintings.....		2149 35 10 70	S.& W.S.		Munich, Oct. 21, '90.
			M	2138 65		509	
		Add to make market value, as per memo. attached.		1680		400	Amt., 409.05 Orig. free.
			M	3818 65		909	
			238	7909			Inc., 409.05
			Amended Dec. 11, 1890. 909 45%		409.05.	E. F. B.	

OATH ATTACHED.

Declaration of consignee, importer, or agent.

I, John C. Ryer, member of the firm of Perry & Ryer, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the *Rugia*, ———, master, from Hamburg, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purports to have been made; and that if at any time hereafter I discover any error in the said invoice or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly

and truly declare that, to the best of my knowledge and belief, Convent of the Sacred Heart, Phila., the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost of the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

J. C. RYER.

Acknowledged before me this 24 day of Nov., 1890.

O. M. STRETZEL,
Deputy Collector.

(Across the face:) Mayer & Co. One case statuary. No invoice. Dy. coll.

146871

385.

United States Circuit Court,

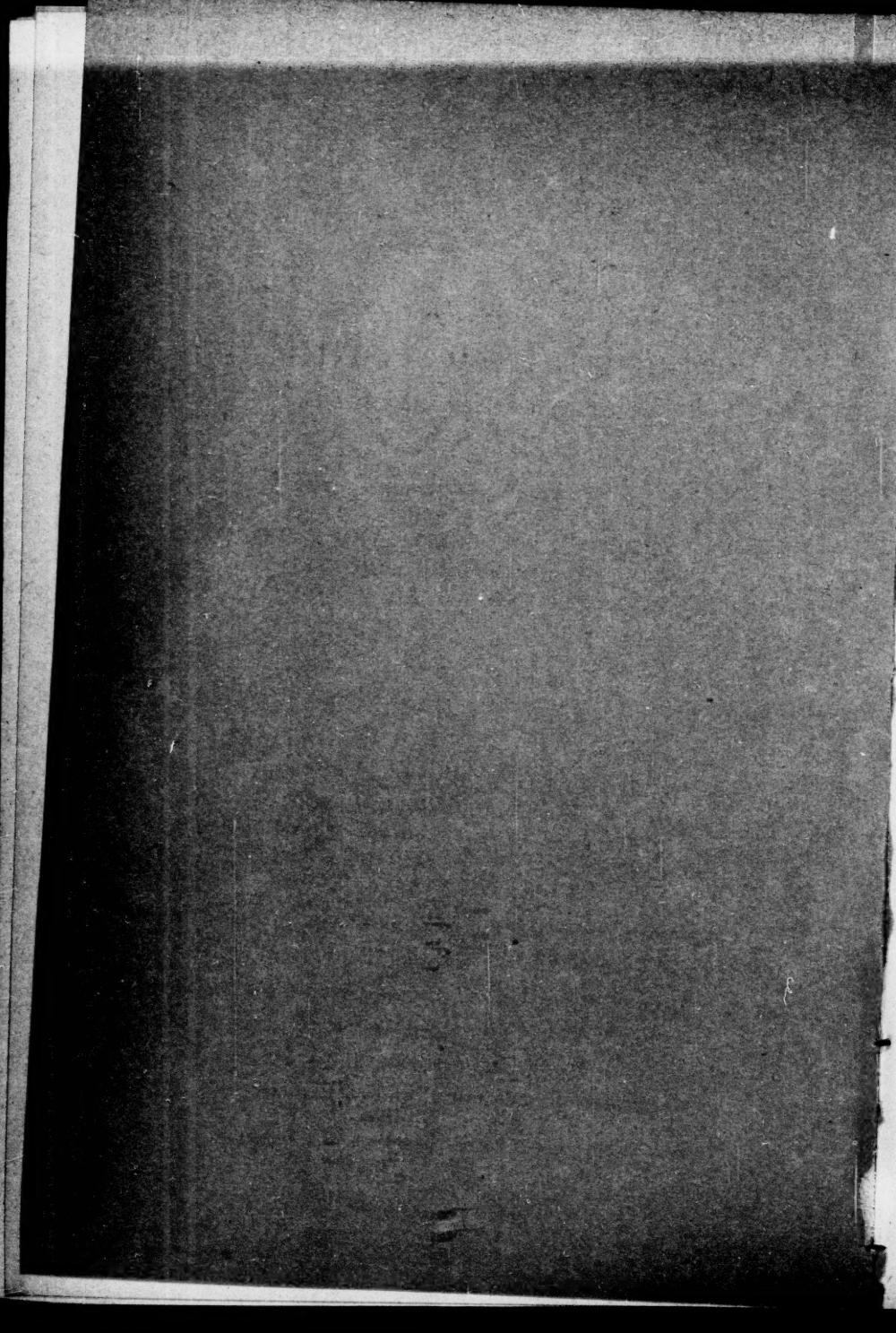
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER OF

THE APPLICATION OF PERRY AND RYER AS TO CERTAIN MERCHANDISE IMPORTED PER "RUGIA" NOVEMBER 24, 1890.

Certified copy.
Stipulation and order.

EDWARD MITCHELL,
United States Attorney,
Attorney for United States.



United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER OF

THE APPLICATION OF PERRY AND RYER AS TO CERTAIN MERCHANDISE IMPORTED PER "RUGIA" NOVEMBER 24, 1890.

Certified copy.
Stipulation and order.

EDWARD MITCHELL,
United States Attorney,
Attorney for United States.

At a Stated Term of the Circuit Court of the United States of America, for the Southern District of New York, held at the United States Circuit Court Rooms in the Post Office Building in the City of New York, on the 28th day of September in the year of our Lord one thousand eight hundred and ninety two.

Present: The Honorable E. Henry Lacombe, Circuit Judge.

In the matter of the application of Perry & Ryer as to certain importations per "Rugia" November 24, 1890. } Suit "A" No. 385.

On the annexed stipulation and consent, It is Ordered that the exhibits in this suit, described in the annexed list and referred to in the printed case on appeal herein, be sent up with the transcript of the record to the Clerk of the Supreme Court of the United States and filed nunc pro tunc as of the date of the filing of the original record therein.

(Signed) E. Henry Lacombe.

U. S. Circuit Court,

Southern District of New York.

In the Matter of the Application of Perry & Ryer as to certain importations per "Rugia" November 24, 1890. } Suit "A" 385.

It is hereby stipulated and consented that the exhibits in this suit mentioned and described in the annexed list and referred to in the printed case on appeal herein shall be sent up with the transcript of the record to the Clerk of the Supreme Court of the United States and filed *nunc pro tunc* as of the date of the filing of the original record therein, and used upon the appeal herein, as if set out in full in the printed record on appeal, and that an order to the above effect may be entered, upon this consent, without further notice.

Curie, Smith & Mackie,
Counsel for Importers.

Edwd. Mitchell,
U. S. Att'y, Att'y for U. S.

LIST OF EXHIBITS.

"A"

Photograph of a Geometrical window.

"B"

Photograph of a Figured Window.

"C"

Photograph of the windows in question.

"D"

Figure of another painted window.

"E"

Official Catholic Directory almanac of the year 1890.

"K"

Trade circular of Mayer & Co.

"L"

Catologue of the Architectural league in New York of their exhibition last December.

Advertisement of Mayer and Co., page 14.

"M"

The book offered in evidence.

"N"

Catologue of Alfred Godwin.

"O"

Pamphlet of Barry and Bett. (Bray & Breck.)

"P"

" of Cox Sons–Buckley & Co.

"Q" and "R"

The Architect of July 19th, 1889. 2 Illustrations.

"S"

The Builders Sept. 7th.

"T"

The Builders November 3, 1888.

"U"

Old stained glass. Long Medford Church drawn by E. L. Condey.

"V"

Cox Sons. Buckley & Co. 2 copies.

"W" and "X"

Samples of glass before and after burning.

"Y"

Advertisement of Mayer & Co., page 128–129 of the Catholic Directory of 1892

"Z"

Advertisement of F. Hischer. Camel DuMaus, France, page 125.

Page 151 Conference report upon the bill H. R. 9416 from lines 14 to and inclusive line 23, also section 757 printed underneath.

Also from same book, lines 12 to 18 inclusive on page 143.

Also hearings before Committee on Ways and Means 51st Congress.

No. 1.

The entry.

No. 2.

The invoice.

EDWD. MITCHELL,
U. S. Atty., Atty. for U. S.
CURIE, SMITH & MACKIE,
Counsel for Importers

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States, in and for the Second Circuit and Southern District of New York, do hereby certify, that I have compared the preceding with the original stipulation and order on file and of record in my office, and that the same are true and correct transcripts therefrom, and of the whole of said originals.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of New York, in the District and Circuit above-named, this 29th day of September in the year of our Lord one thousand eight hundred and ninety-two, and of our Independence the one hundred and seventeenth.

[SEAL.]

JOHN A. SHIELDS,
Clerk.

O

146 U.S. 71

Office Supreme Court U. S.
FILED,
MAR 14 1892
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANTS,
vs.
PERRY & RYER.
No. 1221.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANTS,
vs.
PERRY & RYER. } No. 1221.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

And now, March 14, 1892, comes the Attorney-General and moves the court to advance upon its docket the above-named case, and to set the same down for hearing upon the second Monday of the October term, 1892.

The case is an appeal from a judgment of the circuit court of the United States for the southern district of New York, reversing the decision of the Board of United States General Appraisers, upon a question of duty upon an importation of stained or painted glass windows, or paintings on glass, which were specially imported in good faith for the use of the Convent of the Sacred Heart, Philadelphia, and not

intended for sale. Duty was assessed thereon by the collector of customs at the rate of 45 per centum ad valorem, under the provision in paragraph 122 of the act of October 1, 1890, "for all stained or painted window glass, and stained or painted glass windows." The importers' contention is, and the circuit court sustained them in it, that the importation was exempt from duty under the special provision in paragraph 677 of the same act, exempting from duty paintings specially imported in good faith for the use of any society or institution incorporated or established for religious purposes, and not intended for sale.

The number of importations upon which this question arises is very great. Churches all over the country in process of construction are affected by the question, and so widespread will the influence of the decision in the case be that it is certainly for the public interest to have it speedily rendered. Realizing as I do that it would be improper to ask the court at this late date to set the case down for hearing at the present term, my motion is only that it be assigned for hearing at the opening of the next term. A letter from Cardinal Gibbons on the subject is appended. A number of letters have been received from many other leading clergymen, making the same request.

W. H. H. MILLER,
Attorney-General.

ARCHIEPISCOPAL RESIDENCE,
Baltimore, March 3, 1892.

HONORABLE DEAR SIR: I have been informed that the case relating to the tariff on memorial windows has been placed on the Supreme Court calendar at No. 1221, and that unless some representation regarding the importance of this case is made to the proper authorities it may be a question of months, and even years, before a decision is rendered.

It would be almost impossible to exaggerate the anxiety with which the reverend clergy and the superiors of our institutions await this decision, and I now respectfully ask that you will kindly do whatever lies in your power to have the case advanced on the calendar to as early a date as possible.

By so doing you will confer a great favor on all interested in the erection of churches and schools, and most immediately on

Yours, very respectfully,

J. CARDINAL GIBBONS.

Hon. WM. MILLER,
Attorney-General for the United States.

146 U.S. 71

Office Supreme Court U. S.
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Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
PERRY AND RYER. } No. 794.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY, *Assistant Attorney General.*

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
PERRY AND RYER.
No. 794.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

This case arises upon an importation of what is generally known as stained-glass windows, containing effigies of "St. Agnes" and "St. Joseph teaching our Lord," and other representations of biblical subjects.

These windows were imported on November 24, 1890, per steamship *Rugia*, for the use of the Convent of the Sacred Heart, located at Philadelphia, Pa., and consist of pieces of variously colored glass cut into irregular shapes and fastened together by strips of lead, and intended to be used as church windows in place of the ordinary plain glass window.

These windows did not come to this country in a completed state, but as so many pieces or fragments of glass,

which required much labor to put them together to make them fit for the purpose for which they were intended. (P. 5.)

This court, appealing to that knowledge which it will take, *ex officio*, of such a matter of common observation, in connection with the other evidence in the case, will not fail to perceive some exaggeration in the pretension of the importers that the several articles of merchandise in question are "works of art" and artistic paintings on glass, and as such entitled to free entry.

But the collector took a different view from that advanced by the importers, and assessed duty at the rate of 45 per cent ad valorem under paragraph 122 of the tariff act of October 1, 1890 (26 Stat., 567), which lays that rate of duty on "*all stained or painted window glass and stained or painted glass windows.*"

Against this action of the collector the appellees, representing the importers, Mayer & Co., protested (pp. 5, 6), contending that the merchandise was entitled to free entry as "PAINTINGS", under paragraph 677 of the tariff of October 1, 1890, which is as follows:

> Philosophical and scientific apparatus, instruments, and preparations; statuary, casts of marble, bronze, alabaster, or plaster of Paris; paintings, drawings, and etchings especially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts and not intended for sale.

APPEAL TO BOARD OF APPRAISERS.

An appeal was thereupon taken by the protestants to the board of general appraisers.

After hearing had, the board affirmed the action of the

collector. (See the Opinion of Somerville, Gen'l Appr., pp. 29–31.)

APPEAL TO CIRCUIT COURT.

The protestants then appealed to the circuit court of the United States for the southern district of New York (pp. 1–3).

After the hearing of additional evidence, the circuit court, on May 21, 1891, reached and announced the conclusion that the action of the collector and the board of general appraisers was erroneous, and reversed the same, and ordered and required the collector to reliquidate the entry by admitting said merchandise to free entry, and to refund the duty exacted by him as aforesaid. (Pp. 69, 70.)

OPINION OF THE CIRCUIT COURT.

The opinion of the circuit court, delivered by Lacomb, J., is as follows:

> The board of appraisers in their decision state that the word "paintings" is no doubt sufficiently comprehensive to embrace paintings on glass as well as on other substances, and add that the practice of the Treasury Department for a long series of years has been to classify paintings on glass of the kind under consideration as "paintings" within the meaning of the former tariff acts, at least when they attained to the dignity of works of art. That finding of the board seems entirely borne out by the decisions of the Treasury Department which have been read here, and commends itself to the good sense of everyone.
>
> It seems also to have been the meaning which Congress attached to the word "paintings," because, in paragraph 757, where it made provision with regard to pictorial paintings on glass, it expressly excepted from that classification "stained or painted window glass or stained or painted glass windows." Evidently Congress understood that, unless it thus excepted "painted window glass or painted glass windows," the particular article referred to would fall within the general phraseology, "pictorial paintings on glass." Therefore, when we find the word "paintings" in section 677 it is manifestly the generic word "paintings." There is nothing to limit or qualify, so far as I can see, its broad meaning. That being so, we have, then, first, the broad and generic term

"paintings," and, secondly, as a class or group included under that generic term, the particular variety of painting which is known as "painted window-glass or painted glass windows."

Of course, if it were only a question as to "paintings" on the one side, and the particular kind of painting which is known as "painted glass windows" on the other, there could be no doubt that the latter should be held the more specific designation of the two. We have, however, in paragraph 677, a provision, not for paintings in general, but for "paintings imported in good faith for the use of any religious society, and not intended for sale." I am at a loss to conceive of any more specific designation than that which is limited by the particular use of the individual article which is the subject of importation. Under these circumstances it seems to me that the articles here, there being no dispute as to the purpose for which they were imported or as to the fact that they were brought here in good faith and are not intended for sale, there can be no doubt, it seems to me, that they fall within paragraph 677, and are therefore free. For that reason I shall reverse the decision of the Board of Appraisers and direct the assessment of duty in accordance with the terms of this decision.

APPEAL TO THIS COURT.

On May 22, 1891, the Attorney-General of the United States, through the district attorney, applied to the circuit court for the allowance of an appeal from the said decision to this court, which was, on the same day, accordingly, allowed (pp. 70, 71).

ASSIGNMENT OF ERROR.

The judgment of the circuit court is erroneous, in this, that it did not affirm the collector's liquidation of the entry in question, but, on the contrary, reversed the same, and ordered the collector to admit the said merchandise free of duty.

ARGUMENT.

If what are called paintings or works of art in this case had been placed on glass as a surface to receive the colors merely, instead of the ordinary canvas, and for no

other purpose, the claim of the importers would appear less unreasonable. But that claim does seem incongruous when we consider that the so-called paintings are to fill the window openings of a building, and that the glass is used solely because it will let the light of day pass into the building through the window openings.

In other words, we have here nothing more than an importation of ornamental glass windows, consisting of many pieces of colored glass intended to be put together and set in a framework of lead by the glazier's hand, like ordinary window glass. Indeed it is expressly admitted in the record (p. 14) that the articles in question are windows, and the witness Morgan testifies that he saw them securely fastened in place, as windows, in the Convent of the Sacred Heart, each window being provided with a movable ventilator (p. 49).

A window is none the less a window because it is decorated or pictorial, and it is this utilitarian feature of the merchandise now in question that forbids its classification as *paintings*. Doors may be highly ornate and designed by celebrated artists, but it seems to us it would be going very far to allow them free entry as works of art. Indeed, such a construction of the tariff would lead to the admission free of duty of many descriptions of household furniture, and be extremely disastrous to some of our home industries.

A chair, a table, a chandelier, a clock, may be artistic, but it would hardly be said to be a work of art in the sense of the tariff, under which art and utility *can not exist together in one and the same subject-matter*. A work of

art, to be entitled to free entry, must, we conceive, be purely æsthetic in purpose.

It was on this distinction that this court proceeded in the case of *Arthur* v. *Jacoby* (103 U. S., 677), where it decided that a painting on porcelain was a painting and not "decorated china or porcelain ware," the porcelain having been only used "to obtain a good surface on which to paint and was entirely obscured from view when framed or set in any manner, and *formed no material part of the value of said painting on porcelain*, and did not in itself constitute an article of china ware, *being manufactured simply as a ground for the painting and not for any use independent of the paintings*."

If the painting in that case had been on a porcelain vessel it would not have been classed as a painting, however artistic, but as decorated porcelain ware, and would have been precisely similar to the case of these stained-glass windows, which no artistic merit can elevate to the grade of works of art, because they are nothing more nor less than the windows of a house. Even their coloring serves the practical end of mellowing the light of the sun. They are not, therefore, æsthetic in their purpose.

If, therefore, the collector had classified the merchandise and held it dutiable as paintings, he would have violated the well-settled rule of tariff interpretation, that Congress is presumed to have described the various articles subjected to taxation in the tariff by the terms by which they are known in trade and commerce.

The merchandise in question has no other designation in trade and commerce than "stained or painted window

glass and stained or painted glass windows," and would not be recognized under the term *paintings*, now sought to be applied to it.

This is fully substantiated by the trade circular of Mayer & Co., the manufacturers and importers of the merchandise now in question (original Exhibit K). From this circular or catalogue we make the following extract:

> In submitting this catalogue to your kind attention we would respectfully have it borne in mind that it is almost impossible to compile a collection of designs for STAINED-GLASS WINDOWS so complete as to be of material help in the selection of subjects. This may readily be understood when it is considered what a wide field the Holy Bible alone offers, not to mention the immense number of designs that may be depicted from the history of the saints.

This circular was intended for the United States, as the following extract shows:

> On receiving some indications of sizes, etc., we shall submit estimates, but in order to give some idea of cost we beg to state that windows containing figures or groups vary from 5 to 10 dollars the square foot, and those without figures (richest grisailles and carpet patterns) from 2 to 3 dollars, inclusive of packing and freight TO NEW YORK, DUTY FREE.

If, now, these pictorial windows—these artistic windows, if you please—are called "paintings" in this country, why do Meyer & Co., in soliciting orders in this country from Germany for such windows, call them "stained-glass windows" in their circular? They knew well enough that they had almost just as well send German circulars over here as English ones describing their stained-glass windows as *paintings*, and, consequently, they took good care to use a designation that would be understood in America.

Messrs. Cox & Sons, of London, in their illustrated catalogue designate pictorial windows stained glass windows (see original Ex. P). The same may be said of the illus-

trated catalogue and price list of Messrs. Bray & Breck, of Boston, Mass. (original Ex. O); of Alfred Godwin, of Philadelphia, Pa. (orginal Ex. M and N). See also original Exhibits Q, R, S, T, U, V; and see the testimony of the witness Charles S. Rollinson Lamb (pp. 38–42) as to these exhibits.

The following advertisement, under the name of Mayer & Co., the importers in this case, is to be found on page 14 of the catalogue of the exhibition at New York in December last of the Architectural League:

> The recognized feature of our stained glass is that we combine the acknowledged superiority of the Munich school of drawing with the beautiful and brilliant coloring found in stained-glass windows of the earlier centuries. In bringing together what is excellent in the works of former ages (brilliancy of color effect) with the advantage of our own time (correct modern drawing) we are enabled to produce windows which are beautiful and edifying to the beholder and which give the rich glow to the interior of the church so greatly admired in windows of the Middle Ages.
>
> New York Branch: Mayer & Co., 124 West 23d street.
> (Original Ex. L).

To give emphasis to this, it will be perceived that Mayer & Co., whose chief place of business is Munich, have a branch establishment in New York and must know the commercial designations here of their stained-glass manufactures.

These same manufacturers, Mayer & Co., have an extensive advertisement in Sadlier's Catholic Directory for the year 1890 (pp. 128, 129, Exhibit E), which is published in New York; and as this advertisement contains a representation ofan artistic pictorial window and calls it a "STAINED-GLASS WINDOW," we should no longer hesitate about accepting this designation as the appropriate trade designation in America.

To this conclusive evidence may be added the testimony of various witnesses examined in the proceedings below.

The importers' own witness, Bouché (pp. 8, 11), testified that "*in this country stained and painted glass are the same thing.*" Their witness Withers confirms this (p. 13).

Mr. Morgan, a witness called by the Government (pp. 19–24), not only testified that stained-glass windows was the term for all sorts and descriptions of manufactures like the merchandise in question, but that at the recent Paris Exposition the bulk of all exhibits of that character was put in "Machinery Hall" and "on the staircases leading up to the gallery in Machinery Hall, where there were works of industrial art." He added: "*In the Fine Art Gallery there was no stained glass*" (p. 23).

And when asked how such productions are classed in France and Germany, the witness replied: "They are invariably put down in the decorative and industrial departments." (P. 23.)

The testimony of Edward Colgate (pp. 42–46) is strongly corroborative of that of the witness Morgan as to the use of the term stained-glass windows as a commercial term. This witness has been a manufacturer of stained-glass windows for nearly fifty years, in New York, where he carries on the largest manufactory of stained-glass windows in the United States. This witness says that whether the windows have figures on them or not "they are all stained-glass windows" (p. 45). The testimony of Mr. Lamb may also be found instructive on the point now in hand (pp. 24–26 and 59–69).

It having thus been proved in the case to a demonstration that windows of the description of those imported are known commercially, and also in general speech, as stained-glass windows, can there be a doubt that Congress had them in view when it imposed a duty of 45 per centum ad valorem on "*stained or painted glass windows*" by paragraph 122?

But, as has been already stated, the importers contend that the merchandise was entitled to free entry as three cases of paintings specially imported in good faith for the use of the Convent of the Sacred Heart and not intended for sale, under paragraph 677 (*supra*), which, as we have seen, admits free of duty * * * "statuary, casts of marble, bronze, alabaster or plaster of Paris, paintings, drawings, etchings," specially imported in good faith, etc.

But this contention is repugnant to what this court has repeatedly laid down, namely, that "where an article is designated by a specific name and a duty imposed upon it by such name, general terms in a latter part of the same act, although sufficiently broad to comprehend such article, are not applicable to it." (*Robertson* v. *Glendenning*, 132 U. S., pp. 158, 159, and cases therein referred to.)

Congress having in paragraph 122 specially designated and imposed a tax on "*stained or painted glass windows*," the subsequent use of the general term "*paintings*," in paragraph 677 can not be held to embrace "stained or painted glass windows," even though it should appear that the term "paintings" is sufficiently broad to comprehend such windows in ordinary speech, without disregarding the above rule.

But we deny that the merchandise in question comes within the term "paintings" as used in paragraph 677. The context in which that term occurs, namely, "statuary, casts of marble, bronze, alabaster, or plaster of Paris, paintings, drawings, and etchings," shows clearly, we think, that it was to paintings as articles of virtu and not to paintings as articles of utility that Congress had reference.

The principle of *noscitur a sociis*, now invoked by us, has often been applied by this court in the construction of tariff laws (*Forbes Lithograph Manufacturing Company* v. *Worthington*, 132 U. S., 655, and cases cited), and when applied here shows, conclusively, we submit, that there is no color for the contention that the merchandise was entitled to free entry as "paintings."

It was precisely this idea that the House Committee on Ways and Means must have had when it used the following language in reporting the tariff bill of 1890:

FREE ART.

The committee have recommended that paintings in oil or water colors, being the professional production of painters, and statuary, cut, carved, or otherwise wrought by hand from a solid block or mass of marble, and being a professional production of a statuary and sculptor only, shall be relieved from the 30 per cent duty now imposed and be transferred to the free list. The removal of all duty or tax from works of art has long been petitioned for by American artists. In 1884 the Society of American Artists passed a resolution against the continuance of the [*sic*]. In 1885 a committee was appointed to ascertain the sentiment of the artists of the United States, and, to that end, sent to every artist and every art institution and teacher of art whose address could be found, asking for their views upon the propriety of continuing or abolishing the duty. To that circular the committee received 1,435 replies, and out of that number 1,345 were in favor of a total abolition of the tariff on works of art.

The artists declare they neither need nor desire any duty or protection. They believe it opposed not only to their interests, but to the general interests of American art, and to be as injurious to the public at home as it is

irritating to artists and governments abroad. They conclude their petition to Congress:

"We, as American artists proud of our country, confident of its future, and jealous of its honor and credit, are opposed to all special privileges and discrimination in our behalf. We ask no protection, deeming it worse than useless. Art is a universal republic, of which all artists are citizens, whateverbe their country or clime. All that we ask is that there should be a free field and no favor and the prize adjudged to the best."

It is absurd to suppose that language like this could have had any application to the stained-glass industry, which was clamoring for protection, and to which the "free art" recommended by the committee would have been total destruction.

As the record abundantly shows, the process of making stained-glass windows entitles it to rank only as an industrial art, while the small wages paid to those employed in the industry make their designation as "artists" almost ludicrously inapplicable. Moreover, the most artistic productions of the industry are sold by the square foot, at a fixed market rate, and it is difficult to preserve one's gravity when the pretension is set up that these pictorial stained-glass manufactures are entitled to rank along with paintings on canvas, etchings, drawings, and sculpture.

This intention of Congress is shown with great emphasis by the subsequent paragraph (757) and the history of its enactment.

This paragraph puts on the free list "works of art the production of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass imported for presentation, etc., *except stained or painted window glass or stained or painted glass windows*," * * * and this exception of "stained or painted window glass or stained or painted glass windows" from the operation of

the paragraph was made, out of abundant caution, in order to prevent the things excepted from being comprehended by the term "pictorial paintings on glass" and producing a conflict with paragraph 122, which lays a tax of 45 per cent on the articles excepted.

This unnecessary, but natural, precaution on the part of Congress emphasizes its already declared purpose to tax the subject excepted. We say unnecessary exception because, under the rule laid down in Robertson *v.* Glendenning (*supra*), the things excepted could not have been included under the term "pictorial paintings on glass."

But the history of this paragraph is still more pregnant with meaning.

When the tariff act came before the Senate it amended this paragraph so as to admit free of duty "*painted glass windows, when pictorial*," thus leaving "*only*" stained or painted window glass or "*ordinary*" stained or painted glass windows subject to duty.

In other words, the effect of the amendment was to give the protection of the 45 per cent duty to the manufacturers in this country of stained or painted window glass and *ordinary* stained or painted glass windows, and leave the manufacturers of "*painted glass windows, when pictorial*," to the mercy of foreign competition. The paragraph as amended by the Senate is as follows:

> Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass (395) OR PAINTED GLASS WINDOWS, WHEN PICTORIAL, imported expressly for presentation to a National institution, or to any State or municipal corporation, or incorporated religious society, college, or other public institution, except (396) ONLY stained or painted window glass, or (397) ORDINARY stained or painted glass windows; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

But the Senate receded from its amendments at the suggestion of the committee of conference and allowed the paragraph to stand in its present form and as it came from the House.

The recommendation of the conference committee and the action of the Senate pursuant thereto were no doubt the result of the strong appeal made to the Ways and Means Committee of the House in behalf of the manufacturers of stained or painted glass windows for relief from the oppressive action of the then existing tariff legislation as erroneously interpreted.

It is true the tariff of 1883 imposed a duty of 45 per cent ad valorem on "stained glass," but, as construed, the imposition did not reach stained-glass windows of a pictorial, artistic character, which came in as *paintings*, dutiable at 30 per cent ad valorem under Schedule N, or free of duty altogether, as under the existing tariff.

The effect of paragraph 122 of the present law was to correct the mistaken interpretation of the old law by removing pictorial stained-glass windows, that is to say, "ALL stained and painted glass windows," from the former erroneous classification as paintings, which, as has been said, was seriously menacing our home stained-glass industry.

When, therefore, Congress laid the tax of 45 per cent ad valorem on "ALL stained or painted window glass and stained or painted glass windows" it meant to place the *whole stained-glass industry*, in all its departments, under the protection of the tax.

In looking for the reason of the change from the old to

the new law, in this particular, we find the matter fully explained in the report of the hearings before the Committee on Ways and Means of the House, Fifty-first Congress (p. 462), which is in evidence, and one of the exhibits in the case (p. 19).

When, therefore, the learned circuit judge held that the merchandise in question was entitled to come in free, as *paintings*, he *undid* all that Congress had done for the relief of the stained-glass interest and *revived all the mischiefs of the old law*, and if his decision is allowed to stand it will be a death blow, we are informed, to our domestic stained-glass industry.

The learned circuit judge is, we apprehend, in error when he appeals to the exception of "stained or painted glass windows" from the operation of paragraph 757 as a reason for holding that they should be classed as "paintings" under paragraph 677, where no such exception is made, because the exception referred to was introduced in the former paragraph *to prevent the possibility* of the subject excepted coming in free as "*pictorial paintings on glass.*" The exception was, it is true, not necessary, as we have shown, but it is not at all remarkable that it was introduced to quiet the fears of the stained-glass industry, *which was struggling for life.*

It is inconceivable why Congress should have been willing to let in pictorial stained-glass windows duty free under paragraph 677, and deny them the same privilege under paragraph 757. In other words, the effect of the decision is to permit an institution to import, free of duty, for its own use and not for sale, a pictorial

stained-glass window under paragraph 677, but to prohibit a third person from importing such a window for presentation to the same institution. It may be asked if anything so fanciful is to be attributed to Congress.

We care not what was the tenor of the Treasury decisions under past repealed laws, referred to by the learned judge. They are no authority for the interpretation of a new law, which was intended to do away with the mischief of those decisions.

It is respectfully submitted that the opinion of the learned circuit judge is erroneous and in conflict with the rulings of this court, already referred to and commented on, and that the judgment should be accordingly reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

TARIFF MARCH 3, 1883.

[Paragraph 143.]

143. Porcelain and Bohemian glass, chemical glassware, painted glassware, stained glass, and all other manufactures of glass or of which glass shall be the component material of chief value, not specially enumerated or provided for in this act, forty-five per centum ad valorem.

[Paragraph 470.]

470. Paintings, in oil or water colors, and statuary not otherwise provided for, thirty per centum ad valorem. But the term "statuary," as used in the laws now in force imposing duties on foreign importations, shall be understood to include professional productions of a statutary or of a sculptor only.

[Paragraph 759.]

759. Philosophical and scientific apparatus, instruments, and preparations, statuary, casts of marble, bronze, alabaster, or plaster of Paris, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or encouragement of the fine arts, and not intended for sale.

[Paragraph 819.]

819. Works of art, painting, statuary, fountains, and other works of art, the production of American artists. But the fact of such production must be verified by the certificate of a consul or minister of the United States indorsed upon the written declaration of the artist; paintings, statuary, fountains, and other works of art, imported expressly for presentation to national institutions, or to any State, or to any municipal corporation, or religious corporation or society.

[Paragraph 122.]

122. All stained or painted window glass and stained or painted glass windows, and hand, pocket, or table mirrors not exceeding in size one hundred and forty-four square inches, with or without frames or cases, of whatever material composed, lenses of glass or pebble, wholly or partly manufactured, and not specially provided for in this act, and fusible enamel, forty-five per centum ad valorem.

[Paragraph 465.]

465. Paintings, in oil or water colors, and statuary, not otherwise provided for in this act, fifteen per centum ad valorem; but the term "statuary" as herein used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

[Paragraph 677.]

677. Philosophical and scientific apparatus, instruments, and preparations, statuary, casts of marble, bronze, alabaster, or plaster of Paris, paintings, drawings, and etchings specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

[Paragraph 757.]

757. Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation, or incorporated religious society, college, or other public institution, except stained or painted window glass or stained or painted glass windows; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

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146 U.S. 11

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JAMES. H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

THE UNITED STATES,
Appellant,
vs.
PERRY & RYER,
Respondents.
No. 794.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PERRY & RYER RESPONDENTS.

CHARLES CURIE,
D. IVES MACKIE,
Attorneys for Respondents.

W. WICKHAM SMITH,
Of Counsel.

C. G. Burgoyne, 146-150 Centre Street, New York.

[Paragraph 122.]

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[Paragraph 165.]

165. Paintings, in oil or water colors, and statuary, not otherwise provided for in this act, fifteen per centum ad valorem; but the term "statuary" as herein used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

[Paragraph 677.]

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[Paragraph 757.]

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SUPREME COURT OF THE UNITED STATES,

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STATEMENT.

On the 24th of November, 1890, the respondents made entry at the Port of New York of certain paintings on glass (fols. 1, 60). These articles were such as are "used for decorative purposes in churches," and when so used are placed on the interior of the window frame of the church, and are backed by an outer window of white glass (fol. 14). The outer window is necessary, as such paintings require for their proper exhibition a transmitted light. These paintings had been "executed" by artists of superior merit especially trained for the work, and attained to the rank of works of art (fol. 14). They were imported expressly for the use of the Convent of the Sacred Heart, at Philadelphia, and were designed for use solely by this religious society, and were not intended for sale (fols. 8, 60). Upon the stained glass (stained before the figures were painted, fol. 128) were figures representing biblical subjects and characters, such as St. Agnes, St. Joseph teaching our Lord, St. Mark the Evangelist, St.

Peter, and many other pictorial representations of like kind designed for religious instruction and edification (fols. 8, 60).

Upon these articles the Collector of the port levied and collected a duty of 45% *ad valorem* under the provisions of paragraph 122, Schedule "B" of the Tariff Act of October 1st, 1890, which reads as follows:

"All stained or painted window glass, and stained or painted glass windows, and hand, pocket or table mirrors not exceeding in size one hundred and forty-four square inches, with or without frames or cases of whatever material composed, lenses of glass or pebble, wholly or partly manufactured, and not specially provided for in this Act, and fusible enamel 45% *ad valorem*" (fols. 9, 15).

Against this classification, and exaction the importers, duly and seasonably protested (fol. 12), claiming that the articles were exempt from duty by virtue of paragraph 677 (Free List), of the Act of October 1st, 1890, which reads as follows:

"Philosophical and scientific apparatus, instruments and preparations; statuary, casts of marble, bronze, alabaster or plaster of Paris; *paintings*, drawings and etchings *specially imported in good faith for the use of any society or institution* incorporated or *established for religious*, philosophical, educational, scientific, or literary *purposes*, or for encouragement of the fine arts, *and not intended for sale.*

(The words printed in italics constitute the enumeration under which exemption from duty is claimed).

On the 27th of December, 1890, this protest was transmitted by the Collector to the Board of General Appraisers as required by Section 14 of the "Act to simplify the laws in relation to the collection of the revenues," approved June 10th, 1890 (26 U. S. Stat. at Large, p. 131). A hearing was had before the Board of General Appraisers, and considerable testimony was taken (fols. 17–60). On the 6th of March, 1891, the

Board of General Appraisers rendered their decision (fols.60–64) overruling the protest and affirming the decision of the Collector. On March 17th, 1891, respondents filed a petition in the United States Circuit Court for the Southern District of New York, praying for a review of said decision as provided in Section 15 of the Act of June 10th, 1890, *supra* (fols. 1, 3). After the Board of Appraisers had returned to the Circuit Court the record and the evidence in the case, further testimony was taken on behalf of the collector, as provided for by said Section 15 (fols. 70, 133). On May 21st, 1891, the Circuit Court, after hearing elaborate argument, reversed the decision of the Board of General Appraisers, and held the paintings to be entitled to free entry (fols. 134, 135). The opinion of the Court, which seems to have been carelessly omitted from the record is reported in 47 Fed. Rep., page 110, and for convenience of reference is printed as an appendix to this brief (see pp. 45, 46). It is from this decision of the Circuit Court that the Attorney-General has appealed to this Court (fol. 138).

To reverse the judgment below, this Court must be able to find in the negative on one of the three following propositions:

1st. Are these articles paintings within the meaning of that term as used in paragraph 677 of the free list.

2d. If they are paintings, were they expressly imported in good faith for the use of a society established for religious purposes and not intended for sale?

3d. If the first two questions are answered in the affirmative, are these articles entitled to free entry notwithstanding any provisions, general or specific, in the dutiable schedules which might otherwise include them?

POINTS.

I. The articles in controversy are paintings within the common and popular acceptation of that term.

The following are the definitions of the noun painting as applied to a concrete article found in the works of standard lexicographers:

Webster's Dictionary:

Any work of art in which objects are represented in color on a flat surface; a colored representation of any object or scene; a picture.

Worcester's Dictionary:

A likeness or resemblance painted; something depicted; a picture.

Stormonth's Dictionary:

A picture; a painted resemblance.

Imperial Dictionary:

A picture; a likeness or resemblance in colors.

Century Dictionary:

A picture; specifically a likeness, image or scene depicted with paints.

From an article on the art of painting on glass in the Encyclopædia Britannica (9th Edition), Vol. 10, the following are excerpts:

"The manufacture of colored glass which is the basis of the beautiful and interesting art of glass painting, originated at a period of remote antiquity" (p. 667).

"The technical execution of the *glass paintings* still existing in Italy resembles that prevalent elsewhere, and the method of the old masters is clearly described by Theophilus" (p. 671).

"In Northern climates ancient glass is found to have been affected by the action of the weather. * * * These injuries and accumulations veil the *glass paintings* and produce a mysterious confusion of form and color."

In the American Encyclopædia, Vol. 8, p. 27, we find the following:

"In his 'Art of Glass Painting,' Mr. C. Winston says: The necessity of leading a glass painting together is one of those conditions which cannot be evaded by any ingenuity."

The manner of producing these beautiful works of art is thus briefly described by the witness Bouche (Record, fol. 17). More elaborate descriptfons can be found in the Encyclopædia Britannica or in works on painting and the fine arts.

HENRY A. BOUCHE, sworn, testified as follows:

Examined by Mr. TRELOAR:

"Q. Mr. Bouche, are you an artist? A. Yes, sir.

"Q. Do you know the process of producing articles such as those described in this case? A. Yes, sir.

"Q. State each in full, please. A. The artist draws a cartoon, generally on a reduced scale, which is submitted for approval, and that cartoon is enlarged by the same artist to a full-sized drawing. Pieces of glass are cut from tracing made from the drawing, and before the painting is started on they are all leaded up in temporary frames. Then the artist begins to paint on it, just as he would do on a piece of canvas. After the painting is done, those pieces are all taken away from the frame, put in a kiln, and burned. Those pieces very often have to be burned a second time, and the artist has to go over again painting them and finishing his work. After all the painting is done, the pieces are put in a permanent frame of lead, which binds all the pieces together and renders the painting suitable for presenting."

It would seem that further argument is unnecessary

on the proposition that a work of art of this character is in common speech a *painting* just as much as if it were painted on canvas.

The Attorney-General (see p. 1 of his brief) emphasizes the fact that these windows did not come to this country in a completed state, but as so many pieces or fragments of glass, which required much labor to put them together—to make them fit for the purpose for which they were intended.

To sustain this point he refers to page 5 of the Record in which the Collector says: "The *paintings* are in sections or pieces, &c."

As the Record and all treaties on the subject abundantly show, these paintings are always done in sections, so they may be conveniently baked, and of course they are packed in sections and put together after they arrive at the place where they are to remain. There is no suggestion in the Record, nor is it true as matter of fact, that these paintings differed in this respect from any other paintings on glass. According to the Attorney-General's view a bed is not a bed when it is carted from the store in pieces which have to be put together, and the Bartholdi statue, which adorns our harbor of New York, is not a statue because it was not all put together on the other side and brought here all ready to be placed upon its pedestal.

To the Attorney-General's ironical criticism of our claim that these articles are paintings and works of art, we oppose the official report of the Appraiser, the Government's expert (fol. 14), that "the paintings in this instancehave been executed by artists of superior merit, especially trained for the work which attain to the rank of works of art;" the same officer's indorsement on the invoice (Ex. 2) that they are "paintings on glass, works of art;" the Board of Appraisers finding (fol. 60) that they are "paintings on glass;" the Collector's certificate (fol. 9) that a personal inspection demonstrated to his satisfaction that the merchandise consists of artisti-

cally painted church windows; the affidavit of the artist attached to the invoice, and the Consul's certificate accompanying the same.

II. These articles are paintings within the meaning of that term in the revenue laws as construed by the Treasury Department.

Where a word or term used in a statute has been uniformly given a particular construction by the department of the Government charged with the execution of the statute, Congress, in a new or amendatory statute, is to be deemed to have adopted that construction in the absence of anything showing clearly a contrary intent.

Authorities on this point are numerous. The following may be referred to :

Hahn vs. United States, 107 U. S., 402.
U. S. vs. Philbrick, 120 U. S., 52.
Robertson vs. Bradbury, 132 U. S., 491.
U. S. vs. Johnston, 124 U. S., 236.
Davies vs. Miller, 130 U. S., 284.
U. S. vs. Hill, 120 U. S., 269.

For upwards of thirty years the Treasury Department has held that the term painting covered works of art produced by the process of painting, irrespective of the material or substance on which the painting was executed, and has repeatedly held during that period that paintings on glass like those involved in this controversy, which attained to the rank of works of art, were entitled to entry as paintings, and when imported for churches were entitled to free entry under paragraphs in the revenue laws substantially identical with paragraph 677 of the present act, on which our claim for exemption is based. These decisions will now be

reviewed chronologically, and for convenience of reference will be printed in the appendix to this brief.

On March 29, 1859, the department decided that paintings on glass *which attained to the rank of works of art* were entitled to entry under a provision in Schedule "I." of the Tariff Act of 1857 for "paintings and statuary."

In 1870 paintings on glass imported for the use of Trinity Church, Princeton, New Jersey, were held by the Department entitled to free entry as paintings, under Section 23 of the Act of March 2, 1861, which reads as follows:

All philosophical apparatus, instruments, books, maps and charts, statues, statuary, busts and casts of marble, bronze, alabaster or plaster of paris; paintings and drawings, etchings, specimens of sculpture, cabinets of coins, medals, regalia, gems, and all collections of antiquities; provided the same be specially imported, in good faith, for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school or seminary of learning in the United States (see SS., 551).

In 1872 windows having pictures painted thereon, and being intended for the chancel of a church, were held to be paintings on glass for the use of a religious society, and consequently free from duty, under Section 23, Act, March 2, 1861 (SS., 1297).

In 1874 the Department reiterated its position that paintings on church windows were paintings within the meaning of the law admitting paintings for religious societies free of duty, and when dutiable were "paintings, works of art," dutiable at ten per cent. (SS., 1996).

In 1874 the Department decided that paintings *on ivory* having their value chiefly as works of art were entitled to admission at 10 % duty as "paintings" (SS. 2037).

In the same year the Department again affirmed that memorial windows entitled to distinction as works of art were dutiable at 10 % *ad valorem* as paintings (SS. 2038).

In 1875 the Department decided that paintings *on glass* were dutiable as such at 40 % *ad valorem* irrespective of their artistic merit (SS. 2232).

In 1876 the Department decided that the word painting could not be limited to articles of traffic so as to exclude wall panels (oil paintings) designed for use as decorations for rooms, and to be immovable without liability to destruction (SS. 2679).

In the same year the Department decided that a painting *on silk* which attained to the rank of a work of art was dutiable at only 10 % *ad valorem* as a painting (SS. 2760).

In the same year the same ruling was applied to paintings on leather (SS. 3037).

In 1877 the Department decided as to certain painted windows imported for St. Patrick's Cathedral which attained to the rank of works of art that they were entitled to entry at 10 % as paintings. The ruling of '75 above referred to (SS. 2232) was reversed in accordance with the opinion of the Attorney General that the provision for "*paintings on glass*" in Schedule "B" of the Revised Statutes applied only to *products of handicraft the work of the artisan* (SS. 3142).

See 15 Op. Atty.-Genl., 200.

In 1882 the Department decided that *enameled copper plates*, on which portraits had been painted with a brush by an artist, were entitled to entry at 10 per cent. as paintings (SS. 5143).

In the same year the Department reiterated its ruling that paintings *on silk* attaining to the rank of works of art were dutiable as paintings (S. S. 5475).

In 1884 the Department decided that not only painted glass windows but *the outer iron frames or*

casings therefor separately imported were entitled to free entry under a provision in the Act of 1883 (paragraph 759, Free List) *the language of which was identical* with that of the paragraph under which the Circuit Court has held these importations entitled to free entry (SS. 6681).

In 1888 the Department decided that church windows made of glass of various colors, cut and put together in geometrical figures, each window containing several disks of colored glass on which are painted heads and religious emblems, *the result of purely mechanical work and executed by an artisan*, were not entitled to free entry as paintings (SS. 9121).

In 1889 the Department held that a painted glass window imported by private individuals was entitled to entry at 30 per cent. under the provision in the Act of 1883 (T. I. 470) for "paintings in oil or water colors" (SS. 9428).

It is apparent that *for thirty years* the Department of the Federal Government charged with the interpretation and enforcement of the revenue laws has never questioned the fact that articles of the character of the importations involved in this case were paintings within the meaning of that term as used in the revenue laws.

In view of this long course of decisions by Secretaries of the Treasury, many of whom have been learned laweyrs and judges, and of the opinion of the Attorney-General above referred to, we confess we are somewhat painfully startled at the suggestion on p. 12 of the Attorney-General's brief in this case that "it is difficult to preserve one's gravity when the pretension is set up that these pictorial stained glass manufactures are entitled to rank along with paintings on canvas, etchings, drawings and sculpture."

III. These articles are paintings within the meaning of that term as adjudicated by this Court.

In Arthur vs. Jacoby, 103 U. S., 677, this Court decided that pictures painted by hand on a porcelain ground, *the value of which depended on the skill of the particular artist who painted them*, were dutiable as "paintings." Chief-Justice WAITE said: "It is a matter of no importance in this case that the colors used were metallic and that the pictures were baked to make the colors more firm."

The Attorney General seeks to distinguish this case from the case at bar by referring to the finding quoted by the Court, that the porcelain "formed no material part of the value of said painting on porcelain," and was "manufactured simply as a ground for the painting and not for any use independent of the paintings."

We reply that there is no distinction in this respect between the Jacoby case and the case at bar. The common stained glass is merely the ground on which the picture is painted, and forms no material part of the value of the painting on glass. The plain stained glass without any painting on it could be bought for a nominal price. The Attorney-General harps upon the word "windows," and claims that these articles are designed for purposes of utility. The record shows (fol. 14) that the articles (as certified by the Government expert who examined them) "are placed upon the interior of the window frame of the church and are backed by an outer window of white glass." For purposes of utility the white glass alone would have been sufficient, or if it was desired, in the words of the Attorney-General (p. 6 of his brief), to have them "serve the practical purpose of mellowing the light of the sun," common stained-glass (or geometric) windows, with no artistic pictures upon them, would have answered the purpose. The

Court will be satisfied by an inspection of the representation of one of these paintings (Original Exhibit C) that their purpose and effect is highly æsthetic and not utilitarian.

Nor would the fact that these works of art incidentally served a useful purpose exclude them from classification as paintings, as claimed by the Attorney-General. This theory was advanced by the Appraiser at New York, in 1876, with reference to paintings on canvas to be used as panels for a side wall or ceiling, the Appraiser holding that "the articles in question lose their identity as paintings when put to the use for which they are designed." In over-ruling this position Secretary Bristow said, "The department is not aware of such a limitation to the meaning of the term painting in the tariff or elsewhere." (See SS. 2679, app., p. 34).

The Attorney-General, we submit, is entirely in error in supposing that "art and utility cannot exist together in one and the same subject matter" (see p. 5 of his brief). A work of art does not cease to be such when it incidentally serves a useful purpose. Costly and beautiful paintings on canvas are incidentally house furniture. The peachblow vase would not cease to be a work of art if used as a flower stand. Bric-à-brac is none the less a work of art when used as mantel ornaments.

The articles in question here are no less works of art than any of those mentioned. The Attorney-General assumes that they are not paintings because they are not hung up on a nail against the wall, apparently forgetting the fact that the pictures can be brought out only by light transmitted from behind, and that, therefore, they must *ex necesssitate* be placed in a window opening or other aperture; and if, being so placed, one part of them is made movable so as to admit air when required, they do not thereby lose their character as works of art.

IV. The articles in controversy were paintings imported expressly for the use of a society incorporated for religious purposes and were not intended for sale.

There is no dispute as to the use and purpose of these importations. The Collector admitted it (Rec., fol. 8), and the Board of Appraisers found it as a fact (fol. 60). The Attorney General does not deny it. No discussion of this point is necessary.

V. The articles in controversy, being paintings imported in good faith for the use of a society incorporated for religious purposes, are entitled to free entry under Paragraph 677 of the free list.

It would seem that when an article fits the exact description which Congress has inserted in the Free List, and comes within both the spirit and the precise letter of the provision for exemption, the concern of the tax-gatherer with that particular article was ended. But the Board of Appraisers devised reasons for holding these articles subject to duty, and it remains to examine these reasons. They are found in the Record (fols. 62–64), and may be summarized as follows :

1st. The Act of 1890 made a new and special provision (Paragraph 122) for "stained and painted window glass and painted and stained glass windows."

2d. All parts of the act are to be considered in *pari materia*, and these (Paragraphs 122 and 757) show a plain intent to subject these articles to duty.

3d. The generic word "painting" as used in paragraph 677 of the free list is not so minute or specific as the phrase "stained or painted glass windows" used in paragraphs 122 and 757 of said act.

Let us consider these reasons separately :

VI. The provision in paragraph 122 for "stained and painted window glass and painted and stained glass windows" applies only to such articles as are the work of an artisan—the product of handicraft—and not to beautiful memorial windows which attain to the rank of works of art.

It is a well-settled principle in the construction of the revenue laws that in construing a word or phrase which forms part of a group it will be held to cover articles *ejusdem generis* with the other articles comprising the group. *Noscitur a sociis* is a principle peculiarly applicable to revenue statutes.

Reiche vs. Smythe, 13 Wall., 162.
Forbes Lithograph Co. vs. Worthington, 132 U. S., 655, and cases cited.

We have here a schedule, entitled "Schedule B, *Earths, Earthenware, Glassware.*" A subdivision of it headed, "Glass and Glassware," contains a paragraph (122) which enumerates the following articles:

(a) Stained or painted window glass and stained or painted glass windows.

(b) Hand, pocket or table mirrors.

(c) Lenses of glass or pebble.

(d) Fusible enamel.

Is not this a queer place to look for a provision for beautiful *works of art* which have been recognized for thirty years as paintings?

It is a matter of common knowledge that there is a common variety of stained glass windows purely the work of the artisan in which a pleasing effect is produced by having pieces of colored glass represent

geometrical forms and designs (see record, fols. 25, 53, 91, 99, 113, and original Exhibit A). These are called geometric windows or pattern windows, and it is submitted, in view of the context, are the windows which Congress provided for in paragraph 122.

The importations in this case were fine art paintings *on stained glass* (see Record, fol. 128, where the witness Lamb testifies as follows):

"Q. And the glass, before that figure is painted on there with a brush, is stained glass? A. It is stained glass."

Also folio 36, where the witness Bonaventure testifies as follows:

"Q. You call these paintings? A. They are.

"Q. They are paintings on glass? A. Yes.

"Q. And paintings on stained glass, are they not? A. Of course, they must have a background. They are paintings on glass.

"Q. And they are paintings on stained glass? A. Yes."

There is no more reason for saying that a stained-glass window, with a figure painted on it by an artist of eminence, is covered by an enumeration of stained-glass windows, or stained window glass, than there would be for saying that a provision for canvas in the flax schedule would apply to a painting by Meissonier or Rosa Bonheur, or that a provision for glazed earthenware in the china schedule would apply to a plaque with a painting by a celebrated artist upon it.

The apparent intent of Congress in mentioning stained glass and painted window glass and glass windows in paragraph 122 was not to assess a high duty upon works of art, but to favor these common stained-glass windows by having them pay only 45% duty instead of 60%, which they would have otherwise paid under the provision of paragraph 106 for "all articles of glass—painted, stained or gilded."

It is sought to meet this contention by reference

to the language of paragraph 757, viz: "Other works of art, including pictorial paintings on glass expressly for presentation—except stained or painted glass or stained or painted glass windows." There is nothing in this language which militates against our contention. It should be noted in the first place that Congress has here particularly shown its intention to allow pictorial paintings on glass attaining to the rank of works of art to be admitted for presentation free. Every one knows that paintings on glass can be displayed only by means of a transmitted light which strikes the painting from behind, and it would puzzle any one to say what articles the phrase "works of art, including pictorial paintings on glass," could apply to other than articles of the character of our importations. What kind of an art painting on glass other than windows like ours would anybody think of presenting to a national institution, a college, a public institution or a church? And if there be a rare or occasional instance of a pictoral painting on glass, other than a figured window, what reason can be suggested why Congress should wish to admit such sporadic importations free of duty while subjecting the articles which were of frequent importation, and which served to beautify public buildings, colleges and churches, to a tax equal to nearly half their value. Can anything more absurd be conceived than Congress saying to a wealthy and public-spirited citizen: "If you wish to present a beautiful work of art, in the shape of a fine figured window, to a *national institution* you may do so, but only on condition that you also pay into the treasury a tax, for the privilege, equal to forty-five one hundredths of the value of the painting."

As to the exception in paragraph 757 of stained and painted glass windows, the explanation of it is not far to seek. Any one familiar with the course of revenue legislation knows that it is a common practice for Congress, out of abundant caution, to except from certain

provisions articles, not which it thinks would otherwise be included in them, but which, by forced and strained construction, might be claimed to be within them, and thus produce uncertainty and confusion in the administration of the customs laws and consequent litigation. Examples of this might be multiplied, but two will suffice.

In paragraphs 238 and 239 of the present tariff, Congress provides for chocolate confectionery *eo nomine*. In paragraph 318 it provides for chocolate, which, in view of the specific designation above mentioned, would, of course, be held to cover only chocolate other than chocolate confectionery. Yet, out of abundant caution, Congress added, after the word "chocolate," *except chocolate confectionery.*

Again, paragraph 366 provides for bagging for cotton. Paragraph 364 provides for burlaps. In view of the specific provision for bagging for cotton, the provision for burlaps would, of course, apply only to such burlaps as was not suitable for bagging for cotton. Yet, Congress inserted, after the word "burlaps," "except such as may be suitable for bagging for cotton."

So, in paragraph 757, Congress, having provided for the free admission of certain pictorial paintings on glass, to make sure that this exemption should not be stretched to include stained-glass windows, the work of the artisan, with a few cheap unartistic pictorial devices, introduced for the purpose of evading duties, specifically excepted from the scope of paragraph 757, the same articles, and by precisely the same words of description, that they had provided for in paragraph 122, viz., stained-glass, geometric or pattern windows, the work of the artisan.

That this was the danger against which Congress wished to guard we have not assumed as mere matter of speculation. The records show that Congress *was warned* on this very subject. The record shows (fol.

133) that the United States Attorney offered in evidence before the General Appraiser pages 462, 463, 464 of the volume of hearings before the Committee on Ways and Means of the Fifty-first Congress. This matter has not been printed in the record, but as the book is a public document, and was in evidence, it is proper to refer to it, and proper for the Court to consider it (American Net and Twine Co. vs. Worthington, 141 U. S., 468).

The memorial of the glass-stainers of New York (p. 463 of the publication above referred to) contains this assertion :

"All windows with figures or pictures represented on them, without any regard to their being the work of an artist, are classed as works of art by the appraisers, and admitted free of duty."

The memorial from the glass-stainers of Ohio contains the following assertion :

"Under this decision (Attorney-General's) our appraisers class all windows with representations of figures or pictures on them as works of art without any regard to merit."

These extracts show the purpose Congress had in mind in inserting this exception in paragraph 757. It was *to restrict the exemption* from duty of figured windows imported for presentation *to those which were works of art.* They may not have selected the happiest form of expression for this purpose, but they often err in this respect, and must always do so so long as tariff acts are passed, as this one was, in the rush and confusion of the last few days of a long session.

VII. The principle of statutory construction that all parts of a statute in pari materia are to be read together, has no application where the provision of law

under consideration is neither obscure nor ambiguous, and where no absurd or mischieveous result would ensue from following its language literally.

It would be almost a work of supererogation to cite authorities on this proposition. They are all one way.

See Lewis vs. United States, 92 U. S., 618, 621.
Thornley vs. United States, 113 U. S., 310.

Here is a provision of law (Paragraph 677 under which we make our contention), the language of which is simple, plain, unequivocal. It is a re-enactment *verbatim et literatim* of a provision of the Free List in the Act of 1883. That provision was construed by the Treasury Department precisely as we contend this one should be (see S. S. 6681, Appendix, p. 41). Why any Court or Government officer should wander off from its plain language to search diligently through other schedules or other provisions of the same schedule for an intent not shown by the language of the paragraph under examination we fail to understand.

VIII. Even if recourse be had to the other provisions of the act to determine the intent of Congress, they wholly fail to show any intent to exclude paintings on glass (works of art), in the form of figured windows, from the benefits of paragraph 677 of the Free List.

The first argument that would occur to any one to show that Congress did not mean to except articles like ours from paragraph 677 is that *they did not do it.* They were legislating on a specific subject. It is contended by the Government and the Board of Ap-

praisers (fol. 62), though not conceded by us, that they provided for all stained-glass windows in paragraph 122, and excepted all stained-glass windows from paragraph 757. *If they meant to except them from paragraph 677, why didn't they say so?*

Again, if reference be had to the memorials and statements presented to the Committee of Ways and Means (pp. 462, 463, 464 of the printed report), it will be found that none of them makes the slightest reference to the provision of the Act of 1883, of which paragraph 677 is a reënactment. What the manufacturers were quarreling with was the Attorney-General's opinion (15 Op. Atty.-Gen., 200), which they understood (erroneously) to apply only to paintings on glass imported *for presentation.*

The reasoning of the Board of Appraisers on this subject (fols. 61–64) is a little hazy. But, as we understand their argument, it is about as follows:

Congress expressed an intention to assess duties on stained-glass windows when purchased and imported by wealthy individuals for presentation to churches.

Therefore, they must have intended, although they said nothing about it, to assess duties on paintings on glass in the form of figured windows when purchased and imported by churches for their own use, and we must give effect to this intention.

Here we have not only a most remarkable *non sequitur*, but a most extraordinary assumption of a power to give effect to a supposed intent of Congress not expressed in its legislation.

Not only is the board's assumption entirely unjustified by its false premise, but its conclusion, on whatever premises based, is clearly erroneous.

From the earliest history of our country to the present time it has been the general policy of our governments, State and National, to exempt church property from taxation. An examination of the statutes of the several States will show that church property is to a

greater or less extent exempt from taxation in the following :

Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wyoming (29 in all).

Since the Tariff Act of 1861 Congress has provided for such exemption in its tariff acts.

How bold it is, in the face of these facts, to say that an intention to tax churches must be imputed to Congress, though it is not pretended that such intention is anywhere expressed.

Have we not, on the controry, a right io assume, in the absence of the most explicit language to the contrary, that Congress would not impose a tax on religious societies ?

In a recent case in this Court (Church of the Holy Trinity vs. United States, 143 U. S., 457) it was held that where a claim of the United States against a church to a penalty for the engagement of a clergyman abroad was *strictly within the letter of the statute* it was nevertheless contrary to its spirit, and therefore could not be sustained. We quote from the opinion :

" But beyond all these matters no purpose of *action against religion* can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour there is a single voice making this affirmation. * * * These and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation. In the face of all these, shall it be believed that a Congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation ?

" Suppose in the Congress that passed this act some

Member had offered a bill which in terms declared that if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and priest; or any Episcopal church should enter into a like contract with Canon Farrar; or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was, in effect, the meaning of this statute. The construction invoked cannot be accepted as correct."

Is not this wholesome doctrine applicable to the case at bar? Suppose, in the Fifty-first Congress, some Member had offered a bill which in terms declared that whenever a church (whether the wealthy Episcopal congregation on Fifth avenue or the struggling Roman Catholic mission among the poor) imported a pictorial window expressing in its highest form the artist's conception of scenes in the life and work of the Saviour and his Disciples, to be erected in its edifice for purpose of religious instruction and worship, it should pay to the United States a tax of 45 per cent. on the value of such work of art, can it be believed that it would have received the support of any, except a few who might wish thus to show their contempt for the Christian religion?

The contention of the Government in this case, like its claim in the case last cited, *is shocking to the moral sense and religious sensibilities of our people.* The only difference is that in the Holy Trinity case it was proceeding under the strict letter of the statute in opposition to its spirit, while, in our case, *it is imputing to Congress an evil purpose for which it can find no warrant in the letter of the law.*

The opinion of the Board of Appraisers (fol. 64) concludes with these words: "With the policy of levying duties on such articles designed for religious uses we have nothing to do. Our duty is to construe, not to make laws." It is respectfully submitted that it is not the duty of the Board of Appraisers to construe laws which need no construction any more than it is to make them, and that when they seek by construction to impute to Congress an intent to reverse the long-standing policy of the Government, they *are* having something to do with the policy of the law; *i.e., to override it.*

IX. The provision of the Free List on which the claim for exemption in this case is based is the most specific provision of the Tariff Act which applies to these articles, and must therefore prevail.

It is on this branch of the case that the Board of Appraisers have made the most palpable error. They say (fol. 64): "It is manifest that the generic word 'painting' as used in the paragraph 677 of the Free List is not so minute or specific as the phrase 'stained or painted glass windows' used in paragraphs 122 and 757 of said Act. * * * The more narrow and limited of these descriptions must control on well-settled principles, the more particular class being regarded as an exception grafted on the one more generic." And in like manner the Attorney-General says (p. 10 of his brief): "This contention is repugnant to what this Court has repeatedly laid down, viz., that 'where an article is designated by a specific name and a duty imposed upon it by such name, general terms in a latter part of the same act, although sufficiently broad to comprehend such article, are not applicable to it," and he

cites the case of Robertson vs. Glendenning, 132 U. S., 158.

The reasoning here is all right, but is based on an entire misstatement of our claim. It is not the word "paintings" which we claim to be the most specific designation applicable to our importations, but the phrase "paintings imported in good faith for the use of a society established for religious purposes, and not intended for sale." In the words of the Court below (Appendix, p. 46): "*I am at a loss to conceive of any more specific designation than that which is limited by the particular use of the individual article which is the subject of importation.*"

See also Heller vs. Magone, 38 Fed. Rep., 908.

The testimony so fully referred to by the Attorney-General on pages 7, 8 and 9 of his brief, is therefore wholly irrelevant. There is no question of commercial designation in this case. Though these articles may belong to the general class of articles called stained-glass windows, *they are that particular variety which are paintings, works of art*, and have been held to be such by the Government for thirty years.

The view taken by the Board of Appraisers, if applied to other provisions of the free list, would completely nullify them. Thus the dutiable schedules of the tariff provide various rates of duty for the following articles by name: Cotton stockings (paragraph 352), linen collars and cuffs (paragraph 372), linen shirts (paragraph 372), cotton neckties (paragraph 349), embroidered and hemstitched handkerchiefs (paragraph 373), woolen shawls (paragraph 392), ladies' cloaks (paragraph 387), silk suspenders (paragraph 412), boots and shoes (paragraph 456), kid gloves (paragraph 458). Paragraph 752 exempts from duty "wearing apparel and other personal effects of persons arriving in the United States." According to the reasoning of

the Board, as each of the specific terms above mentioned is more limited than the term "wearing apparel," steamship passengers must pay duty on these articles, though they are in actual use.

Again, horses are dutiable at thirty dollars per head or thirty per cent. *ad valorem* (paragraph 247); hogs, $1.50 per head (paragraph 249); sheep, $1.50 per head (paragraph 250). Paragraph 482 exempts from duty any animal imported specially for breeding purposes. But, according to the Board of Appraisers, as the terms hogs, horses and sheep are more specific than the term animals, horses, hogs and sheep, though imported specially for breeding purposes, are dutiable.

We might multiply these illustrations, but the foregoing are sufficient to enforce the proposition that when classes of articles, by reason of their antiquity, their value as objects of taste, *or the specific use for which they are designed* are made free of duty, specific designations of such articles by name in the dutiable schedules cannot apply to them when they are fairly covered by the provision for exemption.

X. The provision of the Free List relied on by the importers being for the encouragement of religion, should receive the most liberal interpretation.

No portion of our tariff legislation meets with such general approbation among our people as those provisions of the Free List which aim to promote and encourage art, literature, education and religion. Here we might hope the selfish claims of private greed would not intrude, but that the same enlightened spirit which dictated the enactment of these provisions would govern the application and enforcement of them. If the spirit shown by the Treasury Department in regard to this question be encouraged, it will be an easy matter to

fritter away all these beneficent provisions of the Free List, and those who have with unselfish devotion procured the enactment of laws which will fill our churches, schools and colleges with works of art and education will find that, while the Legislature has kept the word of promise to the ear, the Executive has broken it to the hope.

In American Net and Twine Co. vs. Worthington (141 U. S., 468) this Court said: "Were the question one of doubt we should still feel obliged to resolve that doubt in favor of the importer, since the *intention of Congress to impose a higher duty should be expressed in clear and unambiguous language.*" The question in this case is free from doubt, but, were it not, no case could be conceived where the salutary doctrine above quoted would be more fittingly applied than to an attempt on the part of the Government to thrust its hand into the contribution box of the Church for the collection of a tax on devotional works of art.

XI. The judgment of the Circuit Court of the United States for the Southern District of New York reversing the decision of the Collector and Board of General Appraisers, and holding the importations in questions entitled to free entry under Paragraph 677 of the Free List, should be affirmed

CHARLES CURIE,
D. IVES MACKIE,
Attorneys for Respondents.

W. WICKHAM SMITH,
Of Counsel.

APPENDIX A.

TREASURY DEPARTMENT DECISIONS.

Paintings on Glass.

TREASURY DEPARTMENT, March 29, 1859.

SIR—I acknowledge the receipt of your report on the appeal of Messrs. Heroy, Struthers & Co. from your decision subjecting to duty at the rate of 24 per cent., under the classification in Schedule C of the tariff of 1857, of "glass, colored, stained or painted," an article described by them as "paintings on glass," the appellants claiming entry of the same, free of duty, under the classification, in Schedule I., of "paintings and statuary."

The article is understood to be painted glass to be used for windows, &c.

The tariff of 1846, in Schedule C, provided for "glass, colored, stained or painted," and for "paintings on glass," and in Schedule I, for "paintings and statuary imported in good faith as objects of taste and not of merchandise."

It was decided under that tariff that "paintings on glass," being specially provided for in Schedule C, were to be considered as taken out of the general classification in Schedule I, which admitted paintings to free entry if imported as objects of taste and not for merchandise or sale.

Of course the two designations of "glass, colored, stained or painted," and "paintings on glass," in Schedule C in that tariff, must have been construed as referring to different articles.

The tariff of 1857 simply provides, in Schedule I, for "paintings and statuary," without the qualification affixed to those terms in the tariff of 1846; and it is contended that that classification, so unqualified, must be held to embrace "paintings on glass," and that they are thus transferred from Schedule C in the tariff of 1846 to Schedule I in the tariff of 1857. Supposing such to be the legal construction, it would only transfer to Schedule I "paintings on glass," leaving still in Schedule C "glass, colored, stained or painted."

The effect of dropping in the tariff of 1857 the qualifications prescribed in the tariff of 1846 was to admit, free of duty, "paintings and statuary" for whatever purposes imported, but it is still a question for construction as to what is to be regarded a "painting" within the meaning of the law. It surely cannot be held to be the intent of the law to admit every article painted free of duty, but the term "paintings" must be confined to what are usually denominated "works of art" or "objects of taste," whether imported for sale or otherwise.

The article in question is understood not to be of that description, and is subject to the duty of 24 per cent. exacted on the entry.

I am, very respectfully,

HOWELL COBB,

Secretary of the Treasury.

AUGUSTUS SCHELL, ESQ.,

Collector, &c., New York.

(551.)

"Paintings" on Glass Imported in Good Faith for the Use of a Church, are Free of Duty.

The third subdivision of Section 23, of the Act of March 2, 1861, provides, that "Paintings" imported in

good faith, for the use of any society incorporated or established for religious purposes, shall be exempt from duty.

The Department was of opinion that three series of "Paintings" on glass, imported for the use of Trinity Church, Princeton, N. J., were covered by said provision of law, and authorized them to be admitted to entry free of duty, on production to the Collector of the affidavit usually required, that the articles were specially imported in good faith for an established religious society.

Department's decision of November 14, 1865, admitted to free entry a series of paintings on glass, imported for the use of St. Luke's Church, Baltimore. (Letter to Collector at New York, January 25, 1870).

(1297.)

Windows for the Adornment of a Church Entitled to Free Entry.

Windows having pictures painted thereon and being intended for the chancel of a church were held to be paintings on glass for the use of a religious society, and consequently free from duty, under Section 23, Act March 2, 1861 (Letter to Collector at Philadelphia November 19, 1872, Customs Division).

(1996.)

Paintings for Church Windows.

TREASURY DEPARTMENT, November 11, 1874.

SIR—This Department has had under consideration the application of Rev. Chas. W. Rankin (Appeal, 2997*c*), transmitted with your letter of October 28th

last, with several other appeals of a like character, asking free admission of paintings of various characters for churches and religious societies.

The Act of March 2, 1861, was construed by decision of November 14, 1865, addressed to your port, as authorizing the admission, free of duty, of "a series of paintings on glass, imported by and for the use of St. Luke's Church." On several subsequent occasions this Department authorized the designation of the paintings on church windows as paintings within the meaning of the law admitting "paintings for religious societies" free of duty.

As the law now stands, under the condensation and revision of June 22, 1874, the authorization for paintings free for religious societies is not found, but the distinction which has so long admitted these paintings for churches, even if on glass, to the rank of works of art, and, as such, free when so authorized, and paying 10 per cent. when dutiable, is still accepted as a proper rule by this Department.

The designation of "paintings on glass or glasses," originally in the Act of June 30, 1864, has been held by the Department to relate to glass painted as "landscape plates" (August 20, 1860), and as camera glasses in all forms, with all other paintings on glass not attaining rank as works of art.

You are therefore authorized to classify the importation in question as paintings, works of art, dutiable at 10 per cent. *ad valorem*, and to refund any excess of duty that may have been collected.

Very respectfully,

CHAS. F. CONANT,
Acting Secretary.

COLLECTOR OF CUSTOMS, Baltimore.

(2037.)

Paintings on Ivory.

TREASURY DEPARTMENT, December 8, 1874.

SIR—Your communication of December 2 is received, inclosing report of Appraiser Rice on protest and appeal (No. 5553c) of F. A. Goodhue agains t your assessment of duty at forty per cent. *ad valorem* on certain "Delhi paintings," and also sample of the said paintings.

The statement of the Appraiser that the painting is on ivory, and not on glass, appears to be sustained, and the painting itself, having its value chiefly as a work of art, is entitled to admission at the rate of ten per cent. duty. If the value of the glass is separately stated, or is separable, it should be assessed with duty at forty per cent. *ad valorem*, as reported by the Appraiser.

The appeal is therefore sustained, with directions to assess duty as upon a painting and its frame.

Very respectfully,

B. H. BRISTOW,

Secretary.

COLLECTOR OF CUSTOMS, Boston.

(2038)

Duty on Memorial Windows for Churches.

TREASURY DEPARTMENT, December 8, 1874.

SIR—In answer to your communication of December 4, asking what distinction in regard to duty is applied to "memorial windows" for churches, you are informed that only such paintings as attain to the grade of works of art can be admitted at a less duty than is prescribed for paintings on glass.

If the "memorial windows" imported by you are entitled to distinction as "works of art," they can be admitted at the rate of 10 per cent. *ad valorem;* otherwise, they will be charged with duty as manufactures of glass.

Your enclosure is herewith returned.

I am, very respectfully,

B. H. BRISTOW,
Secretary.

JNO. C. SPENCE, ESQ.,
Montreal, Canada.

(2232.)

Paintings Imported for Religious Societies Dutiable.

TREASURY DEPARTMENT, May 10, 1875.

SIR—Your letter of the 8th of February 1st was duly received, enclosing a report from the appraiser at your port on the appeal, 3464*c*, of Rev. R. E. Terry, from your assessment of duty at 40 per cent. *ad valorem* on one case of paintings on glass, imported for the use of St. Mark's Church, Philadelphia.

The question presented by this appeal arises under the Revised Statutes, and involves the right of religious societies to any special privileges in the importation of paintings, whether on glass or otherwise. Under the Act of March 2, 1861, paintings imported for the use or by the order of religious societies were entitled to admission free of duty. The same act imposed a duty of 30 per centum on articles of glass painted. Under this act the Department ruled that paintings on glass, imported for the use of religious societies, were free of duty.

The provision for free entry of paintings for religious societies remained in force until the passage of the Revised Statutes, all subsequent acts omitting any reference to paintings imported for religious societies.

In the condensation of the various laws made by the Revised Statutes, paintings are omitted from the list of articles which may be imported for religious societies free of duty, the only articles which such societies are entitled to import free being books, maps, and charts, regalia, gems, statues, and specimens of sculpture. Schedule B of the Revised Statutes, provides that paintings on glass shall pay a duty of 40 per centum, and Schedule M requires that "paintings not otherwise provided for," shall be subject to a duty of 10 per centum *ad valorem*. Upon this state of the law, the Department decided, July 28, 1874, as per Synopsis of Decisions, 1886, the paintings imported for religious societies are no longer free of duty. Under date of November 11, 1874, the Department further decided that paintings on glass imported for use of churches were to be admitted at a duty of 10 per centum *ad valorem*, if attaining the rank of works of art.

Upon a review of the subject, it is found that the 10 per centum duty on paintings applies only to paintings not otherwise provided for, and that no mention is made in connection therewith of works of art.

The Department therefore holds, as a matter of law, that, as paintings on glass are "otherwise provided for," they are excluded from the duty of ten per centum irrespective of their artistic merit; and, no special privilege being given by law to religious societies in the importation of paintings, it follows that paintings on glass, imported for such societies, are dutiable at forty per centum *ad valorem*.

This being the rate of duty assessed by you in the case under consideration, your assessment of duty is hereby affirmed.

I am, very respectfully,

B. H. Bristow,
Secretary.

Collector of Customs,
Philadelphia.

(2679.)

Paintings for Wall Panels.

TREASURY DEPARTMENT, February 25, 1876.

SIR– Your letter of the 26th ultimo is received, submitting a special report from the appraiser on the appeal (8378*d*) of the Pottier & Stymus Manufacturing Company from your exaction of duty at the rate of forty per cent. *ad valorem* on certain oil paintings, imported by said company per "Herder," December 1, 1875.

From said report it appears that the goods in question consist of six pieces of canvas of various sizes, with designs executed in oil colors by foreign artists, and intended to be used as panels for a side wall or a ceiling, four of them being in the style of "Louis XVI," and invoiced at 910 francs each; one of them, "Egyptian," invoiced at 828 francs; and the other, "Grecian," invoiced at 685 francs; and the Appraiser states as his reason for refusing to admit said articles as "paintings" that, in his opinion, a painting, as contemplated by the tariff, is an article of traffic which may be bought, sold and transferred to various owners, while the articles in question lose their identity as paintings when they are put to the use for which they are designed, and become decorations of the rooms in which they are placed, and are immovable without liability to destruction, and that consequently they were classified as "manufactures of flax, not otherwise provided for," liable to duty at the rate of 40 per cent. *ad valorem*.

The Department is not aware of such a limitation to the meaning of the term "painting" in the tariff or elsewhere, and as the articles in question appear from the description of the appraiser to be oil paintings, the productions of professional artists, they should be admitted to entry at the rate of ten per cent. *ad valorem* under the provision for "paintings not otherwise provided for."

You will, therefore, readjust the entry accordingly, and forward statement.

Respectfully,

B. H. BRISTOW,

Secretary.

COLLECTOR OF CUSTOMS, New York.

(2760.)

Painting on Silk.

TREASURY DEPARTMENT, April 13, 1876.

SIR—Your letter of the 11th instant is received reporting upon the communication of C. B. Richard & Boas, who complain of the assessment of duty at the rate of sixty per cent. *ad valorem* on a "painting on silk" imported per "Gellert" January 17, 1876, and claim that it is only liable to ten per cent. *ad valorem* duty.

It appears from the special report of the Appraiser, in which you concur, that the article in question, although upon a silk foundation, is in fact a "painting" and work of art, and that it is dutiable as such at the rate of ten per cent. *ad valorem*, in accordance with the principles enunciated in Department's decision of February 25, 1876 (No. 2679).

You are, therefore, hereby authorized (as the duties have not been paid) to adjust the entry accordingly.

Very respectfully,

(By order) C. F. BURNAM.

Assistant Secretary.

COLLECTOR OF CUSTOMS, New York.

(3037.)

Paintings on Leather—Classification of.

TREASURY DEPARTMENT, December 2, 1876.

SIR—The Department is in receipt of a letter from Mr. John H. Buck, dated the 18th ultimo, in regard to the assessment of duty on certain paintings on leather imported for the International Exhibition, at the rate of 35 per cent. *ad valorem*, as "manufactures of leather."

From an examination of the samples submitted, the Department is of opinion that the leather occupies the same relation to the work as the canvas does to paintings on canvas, and that paintings of this character should be classified for duty under the provision in Schedule M, Revised Statutes, for "paintings not otherwise provided for," subject to duty at the rate of ten per cent. *ad valorem*, which classification is in accordance with the practice at New York in similar importations.

You will, therefore, be governed accordingly. The samples are sent you by mail for examination and delivery to Mr. Buck.

Respectfully,

(By order) H. F. FRENCH,
Assistant Secretary.

COLLECTOR OF CUSTOMS, Philadelphia, Pa.

(3142.)

Paintings on Glass—Duty on.

TREASURY DEPARTMENT, March 12, 1877.

SIR—By the decision of this Department, No. 1996, of February 11, 1874, it was held that paintings on glass, which attained to the rank of works of art, are

dutiable under the provisions of Schedule N for paintings not otherwise provided for at the rate of ten per cent. *ad valorem.*

This decision was reversed by that of May 10th, 1875 (No. 2232), which held that the provision of Schedule B for paintings on glass or glasses was absolute, and included all paintings on glass or glasses irrespective of the character of the painting or the purposes to which it might be applied.

Upon an application in behalf of St. Patrick's Cathedral, in your city, in regard to certain painted windows proposed to be imported for use in the construction of that edifice the question involved was referred to the Attorney-General, and in reply a letter has been received from him dated the 28th ultimo, in which he states that the question presented presupposes that there is a known and established difference, among paintings on glass, between those which do and those which do not rank as works of art—the former, he states, being produced by the individual skill and invention or design of an artist, and the latter being products of manufacture, or mere handicraft, and bearing the stamp of the artisan simply.

Assuming that such a difference exists in a commercial sense, the Attorney-General holds that the provision in Schedule B, above mentioned, extends only to paintings of the latter description; and that paintings on glass which attain to the rank of works of art fall under the provision of Schedule M, dutiable at the rate of 10 per cent. *ad valorem.*

In arriving at this conclusion, the Attorney-General refers to the fact that the other articles enumerated in the clause in Schedule B, which provides for paintings on glass, are all the work of handicraft, and that the qualifying words "not otherwise provided for" must be understood as applying as well to paintings on glass as to manufactures of glass, and they imply the existence of one or more provisions elsewhere, in which such paintings are otherwise provided for.

These provisions the Attorney-General finds in Section 2505 of the Revised Statutes, which exempts from duty :

First. Paintings specially imported, in good faith, for certain societies therein enumerated.

Second. Paintings, the production of American artists residing abroad.

Third. Paintings imported expressly for presentation to national institutions, or to any State, or to any municipal corporation ; any one of which provisions may include paintings on glass.

To these provisions, the Attorney-General states, is to be added that in Schedule M, as otherwise providing for paintings on glass when of the character which shall entitle them to classification as works of art.

The understanding of this Department upon the question as to whether there is a recognized distinction between paintings on glass ranking as works of art and those which do not, is in accordance with that of the Attorney-General ; and, upon review of the question involved, the Department concurs in the views expressed by the Attorney-General, and hence holds that paintings on glass which attain to the rank of works of art, are liable to duty at the rate of 10% *ad valorem*, under Schedule M.

The question as to whether any given importation should be classified for duty under Schedule B or under Schedule M is one to be decided after an examination of the articles ; and the return of the Appraiser upon the invoice made after such examination should show, for your information, to which class such articles, in his opinion, belong.

Respectfully,
By order : H. F. French,
Assistant Secretary.

Collector of Customs, New York.

(5143.)

Paintings on Enameled Copper-plates—Duty on.

TREASURY DEPARTMENT, March 4, 1882.

SIR—This Department is in receipt of your letter dated the 25th *ultimo*, submitting a report from the appraiser relating further to enameled paintings on copper-plates imported, per "Amerique," October 28, 1881, covered by the appeal (8828g.) of Messrs. V. Bishop & Co.

The Department, on a prior report from the Appraiser, decided, January 28, 1882, that the articles were dutiable at the rate of 45 per cent. *ad valorem*, as manufactures of copper, or of which copper was a component material of chief value, &c. The Appraiser now reports that while the part of the portraits not in flesh color was produced by the enameler by depositing various kinds of prepared paint in conformity with a colored drawing by an artist, the face, arms and hands were painted by a painter with a brush, and that the copper plate is relatively of very small value as compared with the value of the enamel or painter's materials, and with the cost of the professional labor.

He states that if the principle of the Department's decision of March 12, 1877 (Synopsis, 3142), to the effect that painted windows which are produced by individual skill and the invention or design of an artist, are entitled to classification as paintings, is to govern the classification of the articles under consideration, such articles are also entitled to be classified as paintings.

In view of all the facts, the Department is of opinion that the plates are within the principle enunciated in said decision, and therefore may properly be classified as paintings, dutiable at the rate of ten per cent. *ad valorem*.

The instructions of January 28 last (Synopsis, 5107),

which held that the articles were dutiable at forty-five per cent., as assessed, are hereby withdrawn, and you will readjust the entry at a duty of ten per cent. *ad valorem*.

The samples are returned under another cover.

Very respectfully,

H. F. FRENCH,
Assistant Secretary.

COLLECTOR OF CUSTOMS,
New York.

(5475.)

Paintings on Silk—Duty On.

TREASURY DEPARTMENT, December 13, 1882.

SIR—This Department is in receipt of your letter, dated the 24th of October last, transmitting the appeal (2859h) of E. H. M. Huntington from your decision assessing duty at the rate of 60 per cent. *ad valorem* on certain paintings on silk imported per "Oxfordshire," May 15, 1882, and claimed by the appellant to be entitled to admission as paintings, dutiable at 10 per cent. *ad valorem*.

The merchandise consists of two pieces of silk backed with paper, the silk being about two feet wide and five feet long, and both pieces being decorated with a superior painting in water colors, illustrating the cultivation of tea and cotton, respectively.

It is alleged that the articles are to be used as paintings only, and are intended to be hung on walls.

The Appraiser reports, however, that they can be used as curtains, screens or window shades, although it is impossible to prove that the owner will use them as such.

The Department decided, December 5, 1878 (Synopsis, 3807), that certain paintings on silk and paper,

invoiced at a small value, and evidently designed to be made up into curtains, screens, fans, and a variety of other articles of utility, not being works of art, were not entitled to admission as paintings.

It is understood, in the present case, that the pictures may fairly be considered as works of art, and if, after due consideration, you shall be of opinion that this understanding is correct, you may reliquidate the entry and assess duties at the rate of ten per cent. *ad valorem*, taking measures for a refund of the amount exacted in excess.

Very respectfully,

H. F. FRENCH,

Assistant Secretary.

COLLECTOR OF CUSTOMS, New York.

(6681.)

Iron Window-Frames—Duty On.

TREASURY DEPARTMENT, December 16, 1884.

SIR—The Department is in receipt of your letter of the 11th instant reporting further on the appeal (2055k) of Mr. John A. McSorley from your assessment of duty at the rate of forty-five per cent. *ad valorem* on certain iron frames for painted glass windows imported by him per "Canada," June 13, 1884, for the University of the Holy Cross at Notre Dame, Ind.

The Appraiser reports that the articles in question are the outer iron frames or casings, which are to be secured into the walls of the building to hold the glass and metal designs that form the completed window, and that they are similar to those embraced in the Department's decision of January 14, 1884 (not published), and held to follow the classification of the windows of which they are necessary adjuncts.

You are hereby authorized to readjust the entry accordingly, and to take measures for refunding the duty, it being understood that the windows were admitted to entry free of duty.

Very respectfully,

H. F. FRENCH,

Assistant Secretary.

COLLECTOR OF CUSTOMS, New York.

(9121.)

Stained-Glass Windows Not Works of Art for Churches—Not Free.

TREASURY DEPARTMENT, November 19, 1888.

SIR—The Department duly received your letter of the 11th ultimo, further in relation to the appeal (7316*s*) of Mr. Charles C. Botte from your decision assessing duty at the rate of 45 per cent. *ad valorem*, under T. I., 143, on certain church windows imported by him per "Waesland," March 30, 1888, and claimed to be exempt from duty under paragraph 759, free list, as "paintings," specially imported for the use of a church and not for sale.

From the special report of the Appraiser on this appeal it appears that the windows in question are made of glass of various colors, cut and put together in geometrical figures, and invoiced at a price per square meter; that there are in each window several disks of colored glass on which are printed heads and religious emblems, and that they are the result of purely mechanical work, executed by an artisan.

The goods thus appearing to be neither "paintings" nor works of art, are not, in the opinion of the Department, covered by the provisions of said paragraph 759, or any other provision of the Free List.

The claim of the appellant is, therefore, hereby rejected.

Respectfully yours,
HUGH S. THOMPSON,
Acting Secretary.

COLLECTOR OF CUSTOMS, New York.

(9428.)

Paintings—Painted-Glass Windows Dutiable at Rate Provided For.

TREASURY DEPARTMENT, June 12, 1889.

SIR—The Department is in receipt of your letter of the 4th instant, reporting further on the appeal (4256*v*) of Messrs. O. G. Hempstead & Son from your assessment of duty at the rate of 45 per cent. *ad valorem* on a painted-glass window imported by them per "British Princess," January 3, 1889, and claimed to be entitled to entry at the rate of 30 per cent. *ad valorem*, under the provision in T. I., 470, for "paintings in oil and water colors."

From the reports of the Appraiser submitted by you it appears that the window in question is composed of various colors of glass cut and joined together; that the figure of St. Barbara is represented in the centre, and that said figure is painted on the glass and then burnt in, in the same manner as paintings on china are executed.

The Department has heretofore decided that paintings on glass of this character are dutiable as paintings (Synopsis, 3142), and also that paintings on china and porcelain executed in the same manner were entitled to entry under the old tariff as paintings (Synopsis, 4814), so that the appeal is well taken.

You are therefore authorized to readjust the entry

and to take the necessary steps for refunding the excess of duty.

This decision is in harmony with the practice at New York, and does not conflict with the Department's decision of November 19, 1888 (Synopsis, 9121), referred to by the appraiser, in which case the figures were printed and not painted.

Respectfully yours,

GEO. C. TICHENOR,
Assistant Secretary.

COLLECTOR OF CUSTOMS, Philadelphia, Pa.

APPENDIX B.

DECISION OF CIRCUIT COURT.

In re PERRY *et al.*

(Circuit Court, S. D. New York. April 27, 1891.)

LACOMBE, Circuit Judge (orally): The Board of Appraisers, in their decision, state that the word "paintings" is no doubt sufficiently comprehensive to embrace paintings on glass as well as on other substances, and add that the practice of the Treasury Department for a long series of years has been to classify paintings on glass of the kind under consideration, as "paintings" within the meaning of the former tariff acts, at least when they attained to the dignity of works of art. That finding of the Board seems entirely borne out by the decisions of the Treasury Department which have been read here, and commends itself to the good sense of everyone. It seems also to have been the meaning which Congress attached to the word "paintings," because, in paragraph 757, where it made provision with regard to pictorial paintings on glass, it expressly excepted from that classification "stained or painted window glass or stained or painted glass windows." Evidently Congress understood that, unless it thus excepted "painted window glass or painted-glass windows," the particular article referred to would fall within the general phraseology, "pictorial paintings on glass." Therefore, when we find the word "paintings" in Section 677, it is manifestly the generic word "paintings." There is nothing to limit or qualify, so